TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 178.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, STATE OF COLORADO, PETITIONER,

vs.

E. H. ROLLINS AND SONS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITION FOR CERTIORARI FILED OCTOBER 11, 1897.
CERTIORARI AND RETURN FILED NOVEMBER 1, 1897.

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1897, of said court, begun and held at the city of St. Paul, Minnesota, on the first Monday in May, it being the third day of May, A. D. 1897, before the Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges, and Honorable William Lochren, district judge.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Be it remembered that heretofore, to wit, on the thirtieth day of September, A. D. 1896, a transcript of record, in pursuance of a writ of error directed to the circuit court of the United States for the district of Colorado, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit in a certain cause, wherein E. H. Rollins and Sons was plaintiff in error and The Board of County Commissioners of the County of Gunnison was defendant in error; which said transcript of record is in the words and figures following, to wit:

1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on to wit, the 1st day of March A. D. 1895 came E. H. Rollins and Sons, a corporation, by Messrs. Teller, Orahood & Morgan, and H. B. Johnson, its attorneys and filed in said court its complaint, and sued out of and under the seal of said court a writ of summons, against the Board of County Commissioners of the County of Gunnison.

And the said complaint is in words and figures as follows, to wit:

In the Circuit Court of the United States, District of Colorado.

E. H. ROLLINS & SONS, a Corporation, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF Gunnison, Defendant.

Complaint.

Plaintiff complain- of the defendant herein and allege-:

That it is a corporation duly organized under the laws of the State of New Hampshire; that the said defendant is a municipal corporation, organized under the laws of the State of Colorado, and has been so organized and existing since the 9th day of March, 1877; that by the laws of the State of Colorado, as they existed in 1877, and until this time, the board of county commissioners of this county, and of all the counties of the State, were authorized to examine and settle all accounts of the receipts and expenses of the county, and to examine and settle and allow all accounts chargeable against the

county, and when so settled, to issue county warrants therefor; to build and keep in repair the county buildings and to insure the same, and provide suitable rooms for county purposes; to represent the county and have the care of county property, and the management of the business and concerns of the county in all cases where it was not otherwise provided by law.

2 That on the first day of December, 1882, the said defendant caused to be made and executed certain bonds, which said bonds were in general terms as follows, to wit:

Series "A."

No. —. $1,000.

UNITED STATES OF AMERICA, *County of Gunnison, State of Colorado.*

Funding Bond.

The County of Gunnison, in the State of Colorado, acknowledges itself indebted and promises to pay to —— ——, or bearer, one thousand dollars, lawful money of the United States, for value received, redeemable at the pleasure of said county after ten years, and absolutely due and payable twenty years from the date hereof, at the office of the treasurer of said county, in the city of Gunnison, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, on the first day of March and the first day of September in each year, at the office of the county treasurer aforesaid, or at the Chase national bank, in the city of New York, at the option of the holder, upon the presentation and surrender of the annexed coupons as they severally become due.

This bond is issued by the Board of County Commissioners of said Gunnison county in exchange, at par, for valid floating indebtedness of the said county outstanding prior to September 2, 1882, under and by virtue of and in full conformity with the provisions of an act of the General Assembly of the State of Colorado, entitled "An act to enable the several counties of the State to fund their floating indebtedness," approved February 21, 1881; and it is hereby certified that all the requirements of law have been fully complied with by the proper officers in the issuing of this bond. It is further certified that the total amount of this issue does not exceed the limit prescribed by the constitution of the State of Colorado, and that this issue of bonds has been authorized by a vote of a majority of the duly qualified electors of the said county of Gunnison, voting on the question at a general election duly held in said county on the seventh day of November, A. D. 1882.

The bonds of this issue are comprised in three series, designated "A," "B" and "C" respectively, the bonds of series "A" being for the sum of one thousand dollars each, those of series "B" for the sum of five hundred dollars each, and those of series "C" for the sum of one hundred dollars each. This bond is one of series "A."

The faith and credit of the county of Gunnison are hereby pledged for the punctual payment of the principal and interest of this bond.

3 In testimony whereof, the Board of County Commissioners of said Gunnison County have caused this bond to be signed by their chairman, countersigned by the county treasurer and attested by the county clerk, under the seal of the county, this first day of December, A. D. 1882.

[COUNTY SEAL.] —— ——,
Chairman Board of County Commissioners.

Attest; —— ——,
County Clerk.

Countersigned:
—— ——,
County Treasurer.

And the plaintiff further allege- that to each of said bonds were attached coupons for the semi-annual interest accruing on said bonds, which said coupons were in form as follows:

$40. County of Gunnison, in the State of Colorado, $40.

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the 1st day of March, 188–, being six months' interest on funding bond.

No. —. (Series A.)

—— ——,
County Treasurer.

And that there were a sufficient number of coupons attached to each of said bonds, in form as above set forth, to provide for the payment of all of the interest on said bonds.

The plaintiff further alleges that on the 1st day of December, 1882, the said defendant, The Board of County Commissioners of the County of Gunnison, made an exchange with the parties then holding warrants of the county of Gunnison, which had before that time been issued to them, in accordance with the statutes in such case made and provided, and in settlement of claims presented by them against said county, for the bonds of said county, with coupons attached, as above specified; that in every case where such warrants were presented, they were exchanged at par for the face and the interest thereon, for the bonds of said county, in form as above set forth, and in such cases the blanks were filled out with the name of the party receiving such bonds, or exchanging such warrants, and the blank for the place of payment filled in as the banking-
4 house of the Chase national bank, in the city of New York, and thereupon these bonds were signed by the chairman of the board of county commissioners, to wit, E. C. Teachout, and countersigned by the county treasurer of said county, to wit, T. J. Malony, and attested by the county clerk of said county of Gunnison, to wit, A. J. Bean, with the seal of said county, and the said coupons attached to said bonds were also filled out, stating the place in the city of New York as the banking-house of the Chase national

bank, at which the same were payable, and stating also the number of the funding bond and the series to which it was attached, and each coupon was signed by T. J. Malony, who was then county treasurer of said county of Gunnison.

The plaintiff further alleges that at the time of issuing of said said bonds, as above set forth, the amount of said bonds had theretofore been authorized by a vote of the qualified electors to be exchanged for warrants, and that amount was spread upon the records of said county of Gunnison as provided for by the said act as in said bond referred to, to wit, an act entitled "An act to enable the several counties of the State to fund their floating indebtedness," and in all other respects, all the terms and conditions of such act were fully complied with; and plaintiff further alleges that said bonds were duly registered in the office of the auditor of the State of Colorado.

And plaintiff further alleges that in every case where said bonds were issued and delivered to the payees therein named, or to any person for them, the parties received such bonds in exchange for such warrants, the amount of said bonds being the same as the amount of the warrants and interest thereon, that had theretofore been issued by said county to them as above stated.

That the said county of Gunnison from that time, to wit, from the 1st day of December, A. D. 1882, and up until the 1st day of March, 1886, paid the interest on said bonds semi-annually in accordance with the terms of said bonds, and of the coupons thereto attached. And plaintiff alleges that defendant on the 1st day of September, 1886, made default in the payment of said coupons, and then and there neglected and refused to pay the interest due at said day, and has ever since refused, and still does refuse to pay said interest due on said bonds above mentioned.

And the said defendant, on the 1st day of March, 1887, also made default in the payment of said coupons, and then and there neglected and refused to pay the interest due at said day, and has ever since refused, and still does refuse, to pay said interest due on said bonds above mentioned.

5 And the said defendant, on the 1st day of September, 1887, also made default in the payment of said coupons, and then and there neglected and refused to pay the interest due at said day, and has ever since refused, and still does refuse, to pay said interest due on said bonds above mentioned.

And the said defendant, on the 1st day of March, 1888, also made default in the payment of said coupons, and then and there neglected and refused to pay the interest due at said day, and has ever since refused, and still does refuse, to pay said interest due on said bonds above mentioned.

And the said defendant, on the 1st day of September, 1888, also made default in the payment of said coupons, and then and there neglected and refused to pay the interest due at said day, and has ever since refused, and still does refuse, to pay said interest due on said bonds above mentioned.

And the said defendant, on the 1st day of March, 1889, also made

default in the payment of said coupons, and then and there neglected and refused to pay the interest due at said day, and has ever since refused, and still does refuse, to pay said interest due on said bonds above mentioned.

And the said defendant, on the 1st day of September, 1889, also made default in the payment of said coupons, and then and there neglected and refused to pay the interest due at said day, and has ever since refused, and still does refuse, to pay said interest due on said bonds above mentioned.

And the said defendant, on the 1st day of March, 1890, also made default in the payment of said coupons, and then and there neglected and refused to pay the interest due at said day, and has ever since refused, and still does refuse, to pay said interest due on said bonds above mentioned.

And the said defendant, on the 1st day of September, 1890, also made default in the payment of said coupons, and then and there neglected and refused to pay the interest due at said day, and has ever since refused, and still does refuse, to pay said interest due on said bonds above mentioned.

And the said defendant, on the 1st day of March, 1891, also made default in the payment of said coupons, and then and there neglected and refused to pay the interest due at said day, and has ever since refused, and still does refuse, to pay said interest due on said bonds above mentioned.

And the said defendant, on the 1st day of September, 1891, also made default in the payment of said coupons, and then and there neglected and refused to pay the interest due at said day, and has ever since refused, and still does refuse, to pay said interest due on said bonds above mentioned.

6 And the said defendant, on the 1st day of March, 1892, also made default in the payment of said coupons, and then and there neglected and refused to pay the interest due at said day, and has ever since refused, and still does refuse, to pay said interest due on said bonds above mentioned.

And the said defendant, on the 1st day of September, 1892, also made default in the payment of said coupons, and then and there neglected and refused to pay the interest due at said day, and has ever since refused, and still does refuse, to pay said interest due on said bonds above mentioned.

And plaintiff further alleges that it is the holder and owner of coupons formerly attached to and belonging to certain of said above-described bonds of said county of Gunnison, numbered 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20; which were at the time of issuance of said bonds attached to certain of said bonds, of series A, which coupons are for the sum of $40 each, and which bonds were numbered 9, 10, 11, 12, 13, 63, 64, 65, 66 and 98. Which said coupons amount to the following sums:

Amount of principal due on coupons falling due September 1st, 1886, four hundred dollars ($400.00).

Amount of principal due on coupons falling due March 1st, 1887, four hundred dollars ($400.00).

Amount of principal due on coupons falling due September 1st, 1887, four hundred dollars ($400.00).

Amount of principal due on coupons falling due March 1st, 1888, four hundred dollars ($400.00).

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Amount of principal due on coupons falling due March 1st, 1891, four hundred dollars ($400.00).

Amount of principal due on coupons falling due September 1st, 1891, four hundred dollars ($400.00).

7 Amount of principal due on coupons falling due March 1st, 1892, four hundred dollars ($400.00).

Amount of principal due on coupons falling due September 1st, 1892, four hundred dollars ($400.00).

And plaintiff avers that it became the purchaser of said coupons before the same became due, for a valuable consideration paid by it and without notice of any claim at law or in equity affecting their validity.

Plaintiff alleges that all of said coupons are now due and unpaid.

Wherefore, plaintiff pray- judgment against said defendant in the sum of five thousand two hundred dollars, together with interest on the sum of four hundred dollars, at the rate of ten per cent. per annum from the 1st day of September, 1886, until the rendition of judgment.

Also interest at the same rate on the sum of four hundred dollars ($400.00) from the 1st day of March, 1887, until the rendition of judgment herein.

Also interest at the same rate on the sum of four hundred dollars ($400.00) from the 1st day of September, 1887, until the rendition of judgment herein.

Also interest at the same rate on the sum of four hundred dollars ($400.00) from the 1st day of March, 1888, until the rendition of judgment herein.

Also interest at the same rate on the sum of four hundred dollars ($400.00) from the 1st day of September, 1888, until the rendition of judgment herein.

Also interest at the same rate on the sum of four hundred dollars ($400.00) from the 1st day of March, 1889, until the rendition of judgment herein.

Also interest at the rate of ten per cent. per annum on the sum of four hundred dollars ($400.00) from the 1st day of September, 1889, until the rendition of judgment herein.

Also interest at the rate of ten per cent. per annum on the sum of four hundred dollars ($400.00) from the 1st day of March, 1890, until the rendition of judgment herein.

Also interest at the same rate on the sum of four hundred dollars ($400.00) from the 1st day of September, 1890, until the rendition of judgment herein.

Also interest at the same rate on the sum of four hundred dollars ($400.00) from the 1st day of March, 1891, until the rendition of judgment herein.

8 Also interest at the same rate on the sum of four hundred dollars ($400.00) from the 1st day of September, 1891, until the rendition of judgment herein.

Also interest at the same rate on the sum of four hundred dollars ($400.00) from the first day of March, 1892, until the rendition of judgment herein.

Also interest at the same rate on the sum of four hundred dollars ($400.00) from the 1st day of September, 1892, until the rendition of judgment herein.

And for the costs of this suit.

TELLER, ORAHOOD & MORGAN AND
H. B. JOHNSON, *Plaintiff's Attorneys.*

Indorsed: 3201. E. H. Rollins & Sons, a corporation, *vs.* Gunnison County. Complaint. Filed Mar. 1, 1895. Robert Bailey, clerk U. S. circuit court. Teller, Orahood & Morgan and H. B. Johnson, att'ys for plaintiff.

And the said summons and proof of service is in words and figures as follows, to wit:

Summons.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

In the Circuit Court of the United States for the District of Colorado.

E. H. ROLLINS & SONS, a Corporation, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF Gunnison, Defendant.

Complaint filed in the clerk's office this first day of March, A. D. 1895.

The President of the United States of America to the above-named defendant, Greeting:

You are hereby notified that an action has been brought in said court by E. H. Rollins and Sons, plaintiff, against you as defendant to recover the sum of $5,200.00 due upon interest coupons, from funding bonds issued by the county of Gunnison on the first day of December, 1882, and numbered series A, 9, 10, 11, 12, 13, 63, 64, 65,

66 and 98, with interest thereon as more particularly set forth and described in the complaint filed herein and to which reference is here made, and for costs of suit.

9 You are hereby required to appear and demur or answer to the complaint filed in said action, in said court, within ten days (exclusive of the day of service) after this summons shall be served on you, if such service shall be made within the county of Arapahoe; otherwise within forty days from the day of service; and if you fail so to do, the said plaintiff will take judgment against you by default, according to the prayer of the said complaint, for $5,200.00 interest as aforesaid and costs.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Denver, in said district, this first day of March, A. D. 1895, and of the Independence of the United States the 119th year.

[SEAL.] ROBERT BAILEY, *Clerk.*

Proof of Service.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

DENVER, COLO., *May 8th, A. D.* 1895.

I hereby certify, that I received the within writ on the 4th day of May, A. D. 1895, and that I have personally served the same upon the said defendant The Board of County Commissioners of the County of Gunnison by delivering to Samuel P. Spencer clerk of the Board of County Commissioners of Gunnison County Colorado personally, a true copy of the within writ, at the time and place as follows: at Gunnison, county of Gunnison on the 7th day of May A. D. 1895.

This writ therefore, returned executed as the law directs, this 8th day of May A. D. 1895.

JOSEPH A. ISRAEL, *Marshal.*

Indorsed: No. 3201. Circuit court of the United States for the district of Colorado. E. H. Rollins & Sons, plaintiff, *versus* The Board of County Commissioners of the County of Gunnison, defendant. Summons. Filed this 8th day of May A. D. 1895. Robert Bailey, clerk. Teller, Orahood & Morgan and H. B. Johnson, of Denver, attorneys for plaintiff.

10 *Answer.*

UNITED STATES OF AMERICA, }
State of Colorado, } *ss:*

In the Circuit Court of the United States, District of Colorado.

E. H. ROLLINS & SONS, a Corporation, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Gunnison, Defendant. } No. 3201.

Now comes the defendant, by its attorneys, Thomas, Hartzell, Bryant & Lee, Thos. C. Brown, and J. R. Hinkle, and files this its answer herein, and (denied) each and every allegation and statement in plaintiff's complaint contained, except that it is a municipal corporation, and that plaintiff is a corporation organized under the laws of the State of New Hampshire.

Defendant for a second and further defense to plaintiff's complaint alleges that the several coupons sued upon herein and described in the complaint, and the several bonds represented thereby, are each and all of them illegal and void, for the reasons hereinafter stated: that said bonds were made and issued on the 1st day of December, 1882, and purport to have been made and issued under the provisions of an act of the General Assembly of the State of Colorado entitled "An act entitled 'An act to enable the several counties of the State to fund their floating indebtedness,'" approved February 21, 1881, that said bonds with said coupons attached were, each and all of them, made and issued in an attempt to fund floating claims against Gunnison county, which were illegal and void, and which were represented by instruments in writing in the ordinary form of county orders or warrants; that said claims originated, and said warrants were issued, after the adoption of section 6, of article XI, of the constitution of the State of Colorado; that said section of said article of the constitution was adopted in the year 1876, and that the said county of Gunnison was created and established by an act of the legislature of Colorado on March 9, 1877; that none of said warrants, nor any of the claims represented by them, were contracted or made for the purpose of erecting public buildings, nor was the question of incurring or contracting the alleged debts, or any of them, represented by said warrants, ever in any manner submitted to the electors of the county; that at the various times when said claims originated, and when the said warrants were issued, the assessed valuation of taxable property in said Gunnison county amounted to one
11 million dollars, and did not exceed five millions of dollars, as shown by the assessment-rolls of said county; and that, when each and every of the said claims originated, and when each and every of the said warrants were issued, the said county already had, exclusive of all debts contracted or incurred before the adoption of said section 6, of article XI, of the constitution and exclusive of all

debts contracted for the purpose of erecting public buildings, and making and repairing public roads and bridges, an outstanding, valid and subsisting indebtedness amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment-rolls thereof, and that each and every of said claims and warrants were in excess of said limit prescribed by said section of the constitution, and the said county had no power or authority to contract said claims or issue said warrants, or any of them, and the attempt to contract any such claims or to issue said warrants or any of them was in violation of said section 6, of article XI, of the constitution, and that said warrants and the claims represented by them, were, and are, therefore, wholly illegal and void. And defendant avers that the coupons sued upon herein are coupons of bonds issued in exchange for said illegal and void warrants, and for no other consideration whatever, and the said bonds and coupons are, therefore, illegal and void.

And defendant furthermore avers, that, at the time when said bonds and coupons were issued, as aforesaid, and when all things were done which were done under the provisions of said act of February 21, 1881, namely, in the year 1882, said Gunnison county already had, exclusive of all debts contracted or incurred before the adoption of said section 6, article XI, of the constitution, and exclusive of all debts contracted for the purpose of erecting public buildings and making and repairing public roads and bridges, an outstanding, valid and subsisting indebtedness amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment-roll of said county for the year 1882, and that the question of contracting or incurring the alleged indebtedness represented by said warrants and bonds was never in any manner, submitted to the electors of the county, and that each and every of said bonds, coupons of which are sued upon herein, were issued in excess of the limit prescribed by section 6, article XI, of the constitution, and are, therefore, illegal and void.

And defendant avers that while section 1 of said act of February
21, 1881, provided, among other things, that the amount of
12 floating indebtedness of the county at a given time, as in said act provided, should "be determined by the county commissioners, and a certificate made of the same and made a part of the records of the county," and that while the county commissioners did undertake to determine the amount of such floating indebtedness of the county, and did make a certificate purporting to show the amount thereof, and did make the same a part of the records of the county, such certificate so made and made a part of the records of the county showed the amount of such floating indebtedness to be one hundred and seventy-four thousand one hundred and fifteen dollars and twenty-nine cents ($174,115.29), while the assessed valuation of the taxable property within the county at the time as shown by the assessment-roll thereof, for the year 1882, amounted to only two million three hundred and four thousand nine hundred and

fifty-five dollars ($2,304,955); and defendant avers that said certificate so made and made a part of the records of the county was entered of record on the 18th day of November, 1882, and has ever since been, and now is a public record of the county and subject to the inspection of all persons. And defendant avers that the true intent and meaning of said section 1 of said act of February 21, 1881, was that the county commissioners should determine and certify in manner aforesaid, and make a public record of the amount of floating claims in the form of county warrants existing against the county, irrespective of any question as to the validity of said claims as affected by the provisions of the constitution, and that such certificate and record, and the assessment-roll of the county for such year, should impart notice to all persons. Defendant avers that the county commissioners were not empowered by said act of February 21, 1881, nor by any other law, to determine or certify in any manner, either in the bonds to be issued under the provisions of said act, or otherwise, that the bonds thus issued were in exchange for floating indebtedness of the county, or that the issue was in full conformity with the provisions of said act of February 21, 1881, or that the amount of such bonded issue did not exceed the limit prescribed by the constitution of the State, or that said issue of bonds had been authorized by a vote of a majority of the qualified electors of the county, or that the faith or credit of the county was pledged for the payment of said bonds; and defendant avers that any and all such recitals in the said bonds in the respect mentioned were made without any authority of law, and are, therefore, null and void.

13 And defendant for a third and further defense to plaintiff's complaint alleges, that the several coupons sued upon herein and described in the complaint, and the several bonds represented thereby, are each and all of them illegal and void for the reasons hereinafter stated; that said bonds were made and issued on the 1st day of December, 1882, and purport to have been made and issued under the provisions of an act of the General Assembly of the State of Colorado, entitled "An act entitled 'An act to enable the several counties of the State to fund their floating indebtedness,'" approved February 21, 1881; that said bonds with said coupons attached were each and all of them made and issued in an attempt to fund floating claims against Gunnison county, which were illegal and void, and which were represented by instruments in writing in the ordinary form of county orders or warrants; that said claims originated and said warrants were issued after the adoption of section 6, article XI, of the constitution of the State of Colorado, and that the constitution of the State embracing said section of said article was adopted in the year 1876, and the county of Gunnison was created and established by an act of the legislature of Colorado on March 9, 1877; that none of said warrants, nor any of the claims represented by them, were contracted or made for the purpose of erecting public buildings, nor was the question of contracting or incurring the alleged debts, or any of them, represented by said warrants, ever in any manner submitted to the electors of the county; that at the various times when

said claims originated and when the said warrants were issued the assessed valuation of taxable property in the said county of Gunnison amounted to one million dollars and did not exceed five millions of dollars, as shown by the assessment-rolls of said county, and that when each and every of said claims originated, and when each and every of said warrants were issued, the said county already had, exclusive of all debts contracted or incurred before the adoption of section 6, article XI, of the constitution, and exclusive of all debts contracted for the purpose of erecting public buildings and making and repairing public roads and bridges, an outstanding, valid and subsisting indebtedness, amounting to more tha- six dollars on each one thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment-rolls thereof; and the said county had no power or authority to contract said claims or issue said warrants, or any of them, and the attempt to contract any such claims or to issue said warrants, or any of them, was in violation of said section 6, article XI, of the constitution, and that said warrants, and the claims represented by them, were, and are, therefore, wholly illegal and void. And defendant avers
14 that the coupons sued upon herein are coupons of bonds issued in exchange for said illegal and void warrants, and for no other consideration whatever, and the said bonds and coupons are therefore, illegal and void. And defendant furthermore avers that at the time when said bonds and coupons were issued as aforesaid, and when all things were done which were done under the provisions of said act of February 21st, 1881, namely, in the year 1882, said Gunnison county already had exclusive of all debts contracted or incurred before the adoption of said section 6, article XI, of the constitution, and exclusive of all debts contracted for the purpose of erecting public buildings, and making and repairing public roads and bridges, an outstanding, valid and subsisting indebtedness amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county as shown by the assessment-roll of the county for the year 1882, and that the question of contracting or incurring the alleged indebtedness represented by said warrants and bonds, was never in any manner submitted to the electors of the county, and that each and every of said bonds, coupons of which are sued upon herein, were issued in excess of the limit prescribed by section 6, article XI, of the constitution, and are, therefore, wholly illegal and void. The defendant avers that on said 1st day of December, 1882, bonds of Gunnison county, including the bonds, coupons of which are sued upon herein, were issued as under the provisions of said act of February 21, 1881, amounting to one hundred and sixty-nine thousand seven hundred dollars ($169,700), while the assessed valuation of taxable property in the county at the time, as shown by the assessment-roll of the county for the year 1882, amounted to only two millions, three hundred and four thousand, nine hundred and fifty-five dollars ($2,304,955); that section 1 of said act of February 21, 1881, among other things contained the following provisions, to wit:

"The whole amount of bonds issued under this act shall not exceed the sum of the county indebtedness at the date of the first publication of the aforementioned notice and the amount shall be determined by the county commissioners, and a certificate made of the same, and made a part of the records of the county,"

and defendant avers that, while the county commissioners of the county did make what purported to be a certificate of the amount of such indebtedness in the sum of one hundred and seventy-four thousand, one hundred and fifteen dollars and twenty-nine cents ($174,115.29), and did make the same a part of the records of the county; yet, defendant avers, that said county commissioners had no power or authority of law to in any way or manner deter-
15 mine, or attempt to determine, the amount of such indebtedness, nor to certify, or attempt to certify, to the same in any manner whatsoever, either in the bonds to be issued under the provisions of said act, or otherwise, nor to make, or attempt to make, any record thereof, for the reason that said provisions of section 1 of said act of February 21, 1881, in so far as the same undertakes to confer upon the county commissioners power or authority to determine the amount of the floating or other indebtedness of the county, and to make a certificate of the same, and make the same a part of the records of the county, and in so far as the same undertakes to empower or authorize the county commissioners to in any manner determine, or to in any manner certify, to the amount of floating or other indebtedness of the county, for the purposes of or connected with the issuance of bonds under said act, is unconstitutional and void, because the same is in conflict with and in violation of section 6, article XI, of the constitution of the State, in that it attempts to take away from, and deprive the county of, the protection intended and provided for by said section of the constitution, by conferring power and authority upon the board of county commissioners to determine and certify to void, invalid and fictitious indebtedness, and thus estop the county from pleading the truth in defending against such claims.

And defendant further avers that all acts done by said board of county commissioners under or pursuant to said section 1 of said act in determining, or attempting to determine the amount of the indebtedness of the county whether floating or other indebtedness, and in certifying, or attempting to certify to such indebtedness in any manner, and in making, or attempting to make, and record thereof, in any manner, were, and are, null and void, and that any and all recitals made in such bonds to the effect either that the bonds thus issued were issued in exchange for floating indebtedness of the county, or that the issue was in full conformity with the provisions of the said act of February 21, 1881, or that the amount of such bonded issue did not exceed the limit prescribed by the constitution of the State, or that the said issue of bonds had been authorized by a vote of a majority of the qualified electors of the county, or that the faith and credit of the county was pledged for the payment of said bonds, were, and are, absolutely void as against

defendant, and the coupons herein sued upon are, for the reasons aforesaid, likewise, null and void.

And for a fourth and further defense to plaintiff's complaint defendant alleges, that the several coupons sued upon herein and described in the complaint, and the several bonds represented
16 thereby, are each and all of them illegal and void, for the reasons hereinafter stated; that said bonds were made and issued on the 1st day of December, 1882, and purport to have been made and issued under the provisions of an act of the General Assembly of the State of Colorado entitled "An *an* act entitled 'An act to enable the several counties of the State to fund their floating indebtedness,'" approved February 21, 1881; that said bonds with said coupons attached were each and all of them made and issued in an attempt to fund floating claims against Gunnison county, which were illegal and void and which were represented by instruments in writing in the ordinary form of county orders or warrants; that said claims originated and said warrants were issued after the adoption of section 6, article XI, of the constitution of the State of Colorado; that the constitution of the State embracing the said section of said article was adopted in the year 1876, and the county of Gunnison was created and established by an act of the legislature of Colorado on March 9, 1877; that none of said warrants, nor any of the claims represented by them were contracted or made for the purpose of erecting public buildings, nor was the question of contracting or incurring the alleged debts, or any of them, represented by said warrants ever in any manner submitted to the electors of the county; that at the various times when said claims originated, and when the said warrants were issued the assessed valuation of taxable property in said Gunnison county amounted to one million dollars and did not exceed five million dollars as shown by the assessment-rolls of said county and that when each and every of the said claims originated, and when each and every of the said warrants were issued, the said county already had, exclusive of all debts contracted or incurred before the adoption of said section 6, article XI, of the constitution, and exclusive of all debts contracted for the purpose of erecting public buildings and making and repairing public roads and bridges, an outstanding, valid and subsisting indebtedness amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment-rolls thereof, and that each and every of said claims and warrants were in excess of said limit prescribed by the constitution, and the said county had no power or authority to contract said claims or issue said warrants, or any of them, and the attempt to contract any such claims or to issue said warrants or any of them, was in violation of said section 6, article XI, of the constitution, and that said warrants and the claims represented by them, were, and are therefore, wholly illegal and void; and defendant avers that the coupons sued upon herein are coupons of bonds issued in exchange for said illegal
17 and void warrants, and for no other consideration whatever, and that the said bonds and coupons are, therefore, illegal and void.

And defendant furthermore avers that at the time when said bonds and coupons were issued as aforesaid, and when all things were done which were done under the provisions of said act of February 21, 1881, namely, in the year 1882, said Gunnison county already had, exclusive of all debts contracted or incurred before the adoption of the said section 6, of article XI, of the constitution, and exclusive of all debts contracted for the purpose of erecting public buildings and making and repairing public roads and bridges, an outstanding, valid, and subsisting indebtedness amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county as shown by the assessment-roll of said county for the year 1882, and that the question of contracting or incurring the alleged indebtedness represented by said warrants and bonds, was never in any manner submitted to the electors of the county, and that each and every of said bonds coupons of which are sued upon herein, were issued in excess of the limit prescribed by said section 6, of article XI, of the constitution, and are, therefore, illegal and void. And defendant avers, that on said 1st day of December, 1882, bonds of Gunnison county, including the bonds coupons of which are sued upon herein, were issued as under the provisions of said act of February 21, 1881, amounting to one hundred and sixty-nine thousand, seven hundred dollars ($169,700), while the assessed valuation of taxable property in the county at the time, as shown by the assessment-roll of the county for the year 1882, amounted to only two million, three hundred and four thousand, nine hundred and fifty-five dollars ($2,304,955); that section 1 of said act of February 21, 1881, among other things contained the following provision, to wit:

"The whole amount of bonds issued under this act shall not exceed the sum of the county indebtedness at the date of the first publication of the aforementioned notice, and the amount shall be determined by the county commissioners, and a certificate made of the same and made a part of the records of the county,"

and defendant avers that while the county commissioners did undertake to determine the amount of floating indebtedness of the county, and did make what purported to be a certificate of
18 the amount of such indebtedness in the sum of one hundred and seventy-four thousand, one hundred and fifteen dollars and twenty-nine cents ($174,115.29) and did make the same a part of the records of the county, yet, defendant avers that said county commissioners had no power or authority in law to in any manner determine or attempt to determine the amount of such indebtedness, or certify, or attempt to certify to the same in any manner whatever, either in the bonds to be issued under the provisions of said act, or otherwise, nor to make, or attempt to make any record thereof, for the reason that said provision of section 1 of said act of February 21, 1881, in so far as the same undertakes to confer upon the county commissioners power or authority to determine the amount of indebtedness of the county, or to make a certificate of the same, or to make the same a part of the records of the county, and in so

far as the same undertakes to empower or authorize the county commissioners to, in any manner, determine or in any manner certify to the amount of floating or other indebtedness of the county, for any purpose whatever, whether for the issuance of bonds or otherwise, is unconstitutional and void, because in conflict with and in violation of, section 6, of article XI, of the constitution of the State, in that it attempts to authorize the county commissioners to fund illegal, invalid, and worthless claims against the county, and in that it attempts to confer upon the county commissioners as a board the power to ratify, bond and pay, invalid, illegal and void claims against the county, and defendant avers that all acts done by the county commissioners under or pursuant to said section 1 of said act in determining or attempting to determine the amount of the indebtedness of the county, whether floating or other indebtedness, and in certifying, or attempting to certify, to such indebtedness in any manner, and in making or attempting to make, any record thereof, in any manner, and in the issuance of bonds in exchange for said invalid and void claims were, and are, null and void, and that any and all recitals made in said bonds of whatever nature or character, as well as the bonds themselves, were and are null and void as against the defendant, and the coupons herein sued upon are, for the reasons aforesaid, likewise null and void.

And for a fifth and further defense to the plaintiff's complaint defendant alleges, that the several coupons sued upon herein and described in the complaint, and the several bonds represented thereby, are, each and all of them, illegal and void, for the reasons hereinafter stated; that said bonds were made and issued on the 1st day of December, 1882, and purport to have been made and issued under the provisions of an act of the General Assembly of the State of Colorado entitled "An
19 act entitled 'An act to enable the several counties of the State to fund their floating indebtedness,'" approved February 21, 1881; that said bonds with said coupons attached were each and all of them made and issued in an attempt to fund floating claims against Gunnison county which were illegal and void and which were represented by instruments in writing in the ordinary form of county orders or warrants; that said claims originated and said warrants were issued after the adoption of section 6, of article XI, of the constitution of the State of Colorado; that the constitution of said State embracing said section of said article was adopted in the year 1876, and the county of Gunnison was created and established by an act of the legislature of Colorado, on March 9, 1877; that none of said warrants, nor any of the claims represented by them, were contracted or made for the purpose of erecting public buildings, nor was the question of contracting or incurring the alleged debts, or any of them, represented by said warrants, ever in any manner submitted to the electors of the county; that at the various times when the said claims originated and when the said warrants were issued, the assessed valuation of taxable property in said Gunnison county amounted to one million dollars and did not exceed five millions of dollars, as shown by the assessment rolls of the

county, and that when each and every of the claims originated, and when each and every of the said warrants were issued, the said county already had, exclusive of all debts contracted or incurred before the adoption of said section 6, of article XI, of the constitution, and exclusive of all debts contracted for the purpose of erecting public buildings and making and repairing public roads and bridges, an outstanding, valid and subsisting indebtedness amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment-rolls thereof, and that each and every of said claims and warrants were in excess of the limit prescribed by said section of said article of the constitution, and the said county had no power or authority to contract said claims or to issue said warrants, or any of them, and the attempt to contract any such claims or to issue said warrants, or any of them, was in violation of said section 6, of article XI, of the constitution, and that said warrants, and the claims represented by them, were, and are, therefore, wholly illegal and void. And defendant avers that the coupons sued upon herein are coupons of bonds issued in exchange for said illegal and void warrants and for no other consideration whatever, and that said bonds and coupons are, therefore, illegal and void. And defendant furthermore avers, that at the time when said bonds and coupons were issued, as aforesaid, and when all things were done
20 which were done under the provisions of said act of February 21, 1881, namely, in the year 1882, said Gunnison county already had, exclusive of all debts contracted or incurred before the adoption of said section 6, of article XI, of the constitution, and exclusive of all debts contracted for the purpose of erecting public buildings and making and repairing public roads and bridges, an outstanding, valid and subsisting indebtedness, amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment-roll of said county for the year 1882, and that the question of contracting or incurring the alleged indebtedness represented by said warrants and bonds was never, in any manner, submitted to the electors of the county, and that each and every of said bonds and coupons of which are sued upon herein, were issued in excess of the limit prescribed by section 6, of article XI, of the constitution, and are, therefore, illegal and void; that when said bonds were issued the assessed valuation of taxable property in the county as shown by the assessment-roll thereof for the year 1882, amounted to one million dollars and did not exceed five millions of dollars, viz., the sum of two million, three hundred and four thousand, nine hundred and fifty-five dollars ($2,304,955). That said act of February 21, 1881, is unconstitutional and void; that the same and all provisions thereof are in conflict with and in violation of said section 6, of article XI, of the constitution of the State, in that it attempts to confer upon the county commissioners the power to contract, ratify, bond, and pay illegal, fictitious, and void claims against the county in violation of said section of the constitution, and undertakes to confer upon the county commissioners the power by

which they may contract, ratify, bond, and pay such illegal, fictitious, and void claims, in violation of said section of the constitution. And defendant avers that said act and all parts thereof are unconstitutional and void, because in conflict with and in violation of said section 6, of article XI, of the constitution, in this, that it undertakes to authorize and empower the county commissioners to determine whether the county is indebted, whether the indebtedness, so called, is valid, and the amount thereof, and because said act assumes that all instruments in the form of county warrants or the county — represent debts of the county, and authorizes, empowers and directs the county commissioners to treat all such instruments as representing debts of the county. And defendant avers that all and every act done or performed by the county commissioners of said Gunnison county under or pursuant to said act of February 21, 1881, were, and are, void, and that all of said bonds and coupons are, therefore, void.

21 And for a sixth and further defense to the plaintiff's complaint defendant alleges, that the several coupons sued upon herein, and described in the complaint and the several bonds represented thereby are each and all of them illegal and void, for the reasons hereinafter stated; that said bonds were made and issued on the first day of December, 1882, and purport to have been made and issued under the provisions of an act of the General Assembly of the State of Colorado, entitled "An act entitled 'An act to enable the several counties of the State to fund their floating indebtedness,'" approved February 21, 1881; that said bonds, with said coupons attached, were each and all of them made and issued in an attempt to fund floating claims against Gunnison county which were illegal and void, and which were represented by non-negotiable instruments in writing, in the ordinary form of county orders or warrants; that said claims originated, and said warrants were issued, after the adoption of section 6, of article XI, of the constitution of the State of Colorado; that the constitution embracing said section of said article was adopted in the year 1876, and the county of Gunnison was created and established by an act of the legislature of Colorado, on March 9, 1877; that none of said warrants, nor any of the claims represented by them, were contracted or made for the purpose of erecting public buildings, and that but a small portion of said claims or warrants which entered into each of said bonds was made or arose out of the making or repairing of public roads or bridges; that the question of contracting or incurring the alleged debts, or any of them, represented by the said warrants, was not in any manner submitted to the electors of the county; that at the various times when said claims originated, and when the said warrants were issued, the assessed valuation of taxable property in said Gunnison county amounted to one million dollars, and did not exceed five millions of dollars, as shown by the assessment-rolls of said county, and that when each and every of said claims originated, and when each and every of the said warrants were issued, the county already had, exclusive of all debts contracted or incurred before the adoption of said section 6, article XI, of the constitution,

and exclusive of all debts contracted for the purpose of erecting public buildings and making and repairing of public roads and bridges, an outstanding, valid and subsisting indebtedness, amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment-rolls thereof, and that each and every of said claims and warrants were in excess of said limit prescribed by the constitution, and that said county had no power or authority to
92 contract said claims or issue said warrants, or any of them, and the attempt to contract any such claims, or to issue said warrants, or any of them, was in violation of said section 6, of article XI, of the constitution, and the said warrants and the claims represented by them were, and are, therefore, wholly illegal and void. And defendant avers that the coupons sued upon herein are coupons of bonds issued in exchange for such illegal and void warrants, and for no other consideration whatever, and the said bonds and coupons are, therefore, illegal and void.

And defendant furthermore avers that at the time when said bonds and coupons were issued as aforesaid, and when all things were done which were done under the provisions of said act of February 21st, 1881, namely, in the year 1882, said Gunnison county already had, exclusive of all debts contracted or incurred before the adoption of said section 6, article XI, of the constitution, and exclusive of all debts contracted for the purpose of erecting public buildings and making and repairing public roads and bridges, an outstanding, valid and subsisting indebtedness amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment-roll of said county for the year 1882, and that the question of contracting or incurring the alleged indebtedness represented by said warrants and bonds, was not, in any manner, submitted to the electors of the county, and that each and every of said bonds, coupons of which are sued upon herein, were issued in excess of the limit prescribed by said section 6, of article XI, of the constitution, and are, therefore, illegal and void; that when said bonds were issued the assessed valuation of taxable property in the county, as shown by the assessment-roll thereof for the said year 1882, amounted to one million dollars and did not exceed five millions of dollars, to wit, the sum of two million, three hundred and four thousand, nine hundred and fifty-five dollars ($2,304,955).

And defendant further avers that said bonds and coupons are void for the reasons hereinbefore stated, and for the reason that the said act of February 21st, 1881, under the provisions of which said bonds and coupons were issued, is unconstitutional and void in this, that said act undertakes to authorize, empower and direct the county commissioners of any county having a floating indebtedness of a stated amount, consisting of county warrants, under circumstances and in the manner provided in the act, to issue negotiable bonds of the county, in exchange for such warrants, at par, and undertakes to authorize, empower and direct the county commissioners to prescribe the form of such bonds, and undertakes to

authorize and empower the county commissioners, in issuing
23 such bonds, to certify and recite therein, in substance, that the same were issued in full conformity with the provisions of said act, and that all the requirements of law have been fully complied with by the proper officers in issuing such bonds and that the total amount of the issue does not exceed the limit prescribed by the constitution of the State, and that the issue had been authorized by a vote of a majority of the qualified electors of the county, and that the faith and credit of the county is pledged for the payment of the same and interest; that the said act undertakes to authorize, empower and direct the county commissioners to issue such bonds, in manner and form stated, irrespective of the fact whether the said county warrants did or did not represent debts contracted for the erection of public buildings or for making and repairing of public roads and bridges, or whether the amount of such indebtedness or warrants exceeded the limit prescribed by said section 6, of article XI, of the constitution, or whether such warrants, or the claims represented by them originated before or after the adoption of said section 6, of article XI, of the constitution; that said section 6, of article XI, of the constitution, prohibits the issuance of bonds or any other negotiable obligations of the county for any debt except such as may be lawfully contracted for the erection of necessary public buildings or for making or repairing of public roads and bridges, when the assessed valuation of taxable property in the county amounts to one million dollars and does not exceed five millions of dollars, that the county commissioners of Gunnison county issued said bonds as directed by said act of February 21st, 1881, and made therein the recitals, in substance, as above mentioned, which recitals were, and are, false, for the reasons hereinabove alleged; that said recitals were designed and intended to operate to estop the county from pleading or presenting the defense that said warrants which were exchanged for said bonds and the said bonds and coupons were void; that said act, and all parts thereof, are unconstitutional and void, because in violation of, and in conflict with, said section 6, of article XI, of the constitution, in that it undertakes to empower the county commissioners to issue negotiable bonds of the county for indebtedness and claims not contracted for the purpose of erecting necessary public buildings, nor for the making or repairing of public roads or bridges, and defendant therefore says that said bonds and all recitals therein are null and void.

And defendant, for a seventh and further defense to the plaintiff's complaint alleges that the several coupons sued upon herein, and described in the complaint, and the several bonds represented
24 thereby, are each and all of them illegal and void, for the reasons hereinafter stated; that said bonds were made and issued on the 1st day of December, 1882, and purport to have been made and issued under the provisions of an act of the General Assembly of the State of Colorado entitled "An act entitled 'An act to enable the several counties of the State to fund their floating indebtedness,'" approved February 21st, 1881; that said bonds, with

said coupons attached, were each and all of them made and issued in an attempt to fund floating claims against Gunnison county, which were illegal and void, and which were represented by instruments in writing in the ordinary form of county orders or warrants; that said claims originated and said warrants were issued after the adoption of section 6, of article XI, of the constitution of the State of Colorado; that the constitution of said State embracing said section of said article was adopted in the year 1876, and the county of Gunnison was created and established by an act of the legislature of Colorado on March 9, 1877; that none of the said warrants, nor any of the claims represented by them, were contracted or made for the purpose of erecting public buildings, nor was the question of contracting or incurring the alleged debts, or any of them, represented by said warrants, ever in any manner submitted to the electors of the county; that at the various times when said claims originated, and when the said warrants were issued, the assessed valuation of taxable property in said Gunnison county amounted to one million dollars, and did not exceed five millions of dollars, as shown by the assessment-rolls of said county, and that when each and every of said claims originated, and when each and every of said warrants were issued, the said county already had, exclusive of all debts contracted or incurred before the adoption of said section 6, of article XI, of the constitution, and exclusive of all debts contracted for the purpose of erecting public buildings, and making and repairing public roads and bridges, an outstanding, valid and subsisting indebtedness amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment-rolls thereof; and that each and every of said claims and warrants were in excess of the said constitutional limit, and the said county had no power or authority to contract said claims or issue said warrants, or any of them; and the attempt to contract any such claims, or to issue said warrants, or any of them, was in violation of section 6, of article XI, of the constitution; and that said warrants, and the claims represented by them, were, and are, therefore, wholly illegal and void.

And defendant avers that the coupons sued upon herein are
25 coupons of bonds issued in exchange for said illegal and void warrants, and for no other consideration whatever, and that said bonds and coupons are, therefore, illegal and void.

And defendant furthermore avers that, at the time when said bonds and coupons were issued, as aforesaid, and when all things were done which were done under the provisions of said act of February 21st, 1881, namely, in the year 1882, said Gunnison county already had, exclusive of all debts contracted or incurred before the adoption of said section 6, of article XI, of the constitution, and exclusive of all debts contracted for the purpose of erecting public buildings and making and repairing public roads and bridges, an outstanding, valid, and subsisting indebtedness amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county as shown by the assessment-roll of said county for the year 1882, and that the question of con-

tracting or incurring the alleged indebtedness represented by said warrants and bonds was never in any manner submitted to the electors of the county, and that each and every of said bonds, coupons of which are sued upon herein, were issued in excess of the limit prescribed by said section 6, article XI, of the constitution, and are, therefore, illegal and void; that when the said bonds were issued the assessed valuation of taxable property in the county, as shown by the assessment-roll thereof, for the year 1882, amounted to one million dollars, and did not exceed five millions of dollars, namely, the sum of two million, three hundred and four thousand, nine hundred and fifty-five dollars ($2,304,955). The defendant further avers that, in the year 1880, the county commissioners of said Gunnison county, acting under the provisions of an act of the General Assembly of the State of Colorado entitled "An act concerning counties, county officers, and county government, and repealing laws on these subjects," approved March 24, 1877, caused to be issued and sold, for the purpose of erecting necessary public buildings, and making and repairing public roads and bridges, for the county, bonds of said county, to the amount of twenty thousand dollars ($20,000); that, preparatory to the issuance of said bonds, the said county commissioners, as directed by section 21 of said act, entered of record an order specifying said amount as the amount required for said purposes, and specifying the object for which said debt was to be created. And the defendant avers that the law was in all respects complied with in the issuance of said bonds; that the record of said order specifying the amount required for the
26 erection of necessary public buildings and the making and repairing of public roads and bridges, viz., the sum of twenty thousand ($20,000) and all facts and matters connected with the issuance of said bonds thus made a matter of record, have ever since been, and now are, matters of public record of said county, and subject to the inspection of all persons; that said bonds have, ever since their issuance as aforesaid, been and now are an indebtedness of Gunnison county, and shown by the public records of said county.

The defendant further avers, that under and pursuant to the provisions of section 30 of said act of March 24, 1877, the county commissioners of said county, at the regular sessions of the board in January and July, in the year 1882, made out semi-annual statements of the indebtedness of the county, and at said respective times caused said statements to be published as provided for in said section of said act; that each of said semi-annual statements showed the amount of debt owing by the county, and in what the debt consisted, what payments had been made upon the same, when any payments had been made, the rate of interest which said debts were drawing, and also a detailed account of receipts and expenditures of the county for the preceding months, and in which it was shown from what officer and on what account any money had been received, and the amounts and to what individuals and on what account any money had been paid, and the amounts, and in each of said statements a balance was struck showing the amount of the

deficit; and defendant avers that each of said statements, as provided by said section of said act, were entered of record by the clerk of the board of county commissioners in a book by him kept for that purpose only; and defendant avers that said book is a public record and has been open to the inspection of all persons at all times.

The defendant further avers, that in each of said semi-annual statements, made after the issue of the said twenty thousand dollars ($20,000) of building road and bridge bonds aforesaid the indebtedness represented by said bonds was clearly shown; that in each of said semi-annual statements of the indebtedness of the county made in January and July in the year 1882, the indebtedness represented by said building, road and bridge bonds was shown, and in each of said statements it was further shown that, aside from the indebtedness represented by said building, road and bridge bonds, the debts theretofore contracted by the county exceeded the limit prescribed by section 6, of article XI, of the constitution.

And defendant further avers that it was shown by the said semi-annual statement made and recorded as aforesaid, in July,
27 1882, that the debts contracted by the county during said year and prior to the making and recording of said statement exceeded the (limited) prescribed by said section 6, of article XI, of the constitution; and defendant avers that said several semi-annual statements and the matters contained therein were and are true.

And defendant avers that, by the public records above mentioned, it was shown that at the time of the issuance of the bonds, coupons of which are sued upon herein and also at the time when said claims originated and the said warrants were issued, which were exchanged for said bonds and upon which said bonds are based, the county had already contracted debts in excess of the limit prescribed by said section 6, of article XI, of the constitution, and that all purchasers or holders of said bonds, including (*and*) plaintiffs, took the same with notice of the fact as shown by the said public records and the assessment-rolls of said county that said bonds and the claims upon which they were based, were void, because in excess of said constitutional limit.

And defendant for an eighth and further defense to the plaintiff's complaint alleges, that the several coupons sued upon herein and described in the complaint, and the several bonds represented thereby, are each and all of them, illegal and void, for the reasons hereinafter stated; that said bonds were made and issued on the 1st day of December, 1882, and purport to have been made and issued under the provisions of an act of the General Assembly of the State of Colorado, entitled "An act entitled 'An act to enable the several *millions* of the State to fund their floating indebtedness,'" approved February 21, 1881; that said bonds with said coupons attached were each and all of them made and issued in an attempt to fund floating claims against Gunnison county, which were illegal and void, and which were represented by instruments in writing in the ordinary form of county orders or warrants; that said claims origi-

nated and said warrants were issued, after the adoption of section 6, of article XI, of the constitution of the State of Colorado; that the constitution of said State embracing said section of said article, was adopted in the year 1876, and the said county of Gunnison was created and established by an act of the legislature of Colorado on March 9, 1877; that none of the said warrants nor any of the claims represented by them, were contracted or made for the purpose of erecting public buildings, nor was the question of contracting or incurring the alleged debts, or any of them, represented by said warrants, ever in any manner submitted to the electors of the
28 county; that at the various times when said claims originated and when the said warrants were issued, the assessed valuation of the taxable property in said Gunnison county, amounted to one million dollars and did not exceed five millions of dollars, as shown by the assessment-rolls of said county, and that when each and every of the said claims originated and when each and every of the said warrants were issued the said county already had, exclusive of all debts contracted or incurred before the adoption of said section 6, of article XI, of the constitution and exclusive of all debts contracted for the purpose of erecting public buildings and making and repairing public roads and bridges, an outstanding, valid, and subsisting indebtedness amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment-rolls thereof, and that each and every of said claims and warrants were in excess of said constitutional limit and the said county had no power or authority to contract said claims or issue said warrants, or any of them, and the attempt to contract any such claim or to issue said warrants, or any of them, was in violation of said section 6, of article XI, of the constitution, and that said warrants and the claims represented by them, were and are, therefore, wholly illegal and void. And defendant avers that the coupons sued upon herein are coupons of bonds issued in exchange for said illegal and void warrants, and for no other consideration whatever, and that the said bonds and coupons are, therefore, illegal and void.

And defendant furthermore avers that at the time when said bonds and coupons were issued as aforesaid, and when all things were done which were done under the provisions of said act of February 21, 1881, namely, in the year 1882, said Gunnison county already had, exclusive of all debts contracted or incurred before the adoption of said section 6, of article XI, of the constitution, and exclusive of all debts contracted for the purpose of erecting public buildings and making and repairing public roads and bridges, an outstanding, valid, and subsisting indebtedness amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment-roll of said county for the year 1882, and that the question of contracting or incurring the alleged indebtedness represented by said warrants and bonds was never in any manner submitted to the electors of the county, and that each and every of said bonds, coupons of which are sued upon herein, were issued in excess of the limit prescribed

by section 6, of article XI, of the constitution, and are, therefore, illegal and void.

29 And defendant avers that while section 1 of said act of February 21, 1881, provided, among other things, that the amount of floating indebtedness of the county at a given time as in said act provided should "be determined by the county commissioners and a certificate made of the same and made a part of the records of the county," and that while the county commissioners did undertake to determine the amount of such floating indebtedness of the county and did make a certificate purporting to show the amount thereof, and did make the same a part of the records of the county, said certificate so made and made a part of the records of the county showed the amount of such floating indebtedness to be one hundred and seventy-four thousand one hundred and fifteen dollars and twenty-nine cents ($174,115.29), while the assessed valuation of taxable property within the county at the time, as shown by the assessment-roll thereof, for the year 1882, amounted to only two million, three hundred and four thousand, nine hundred and fifty-five dollars ($2,304,955), and defendant avers that said certificate so made and made a part of the records of the county was entered of record on the 18th day of November, 1882, and has ever since been and now is a public record of the county, and subject to the inspection of all persons, and defendant avers that the plaintiffs and all prior holders of said bonds, the coupons of which are sued upon herein, took the same with notice and knowledge of the fact, as shown by the said record and the assessment-roll of said county for the year 1882, and the prior assessment-rolls of said county, that in the issuance of said bonds the limit prescribed in said section 6, of article XI, of the constitution, had been exceeded and that said bonds were void; and defendant avers that said bonds and coupons are void in the hands of the plaintiff.

And for a ninth and further defense to the plaintiff's complaint defendant alleges, that the several coupons sued upon herein and described in the complaint and the several bonds represented thereby, are each and all of them illegal and void, for the reasons hereinafter stated: that said bonds were made and issued on the 1st day of December, 1882, and purport to have been made and issued under the provisions of an act of the General Assembly of the State of Colorado, entitled "An act entitled 'An act to enable the several counties of the State to fun- their floating indebtedness,'" approved February 21, 1881; that said bonds, with said coupons attached, were each and all of them made and issued in an attempt to fund floating claims against Gunnison county which were illegal and void, and which were represented by instruments in

30 writing, in the ordinary form of county orders or warrants; that said claims originated, and said warrants were issued, after the adoption of section 6, of article XI, of the constitution of the State of Colorado; that the constitution of said State, embracing said section of said article, was adopted in the year 1876, and that said county of Gunnison was created and established by an

act of the legislature of said State, on March 9, 1877; that none of said warrants, nor any of the claims represented by them, were contracted or made for the purpose of erecting public buildings, nor was the question of contracting or incurring the alleged debts, or any of them, represented by said warrants, ever in any manner submitted to the electors of the county; that at the various times when the *the* said claims originated and when the said warrants were issued, the assessed valuation of taxable property in said Gunnison county amounted to one million dollars, and did not exceed five millions of dollars, as shown by the assessment-rolls of said county, and that when each and every of the said claims originated and when each and every of the said warrants were issued, the said county already had, exclusive of all debts contracted or incurred before the adoption of said section 6, of article XI, of the constitution, and exclusive of all debts contracted for the purpose of erecting public buildings and making and repairing public roads and bridges, an outstanding, valid, and subsisting indebtedness amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment-rolls thereof; and that each and every of said claims and warrants were in excess of said constitutional limit, and the said county had no power or authority to contract said claims or issue said warrants, or any of them, and the attempt to contract any such claims, or to issue said warrants, or any of them, was in violation of said section 6, of article XI, of the constitution, and that said warrants, and the claims represented by them, were and are, therefore, wholly illegal and void. And defendant avers that the coupons sued upon herein are coupons of bonds issued in exchange for said illegal and void warrants, and for no other consideration whatever, and that the said bonds and coupons are, therefore, illegal and void.

And defendant furthermore avers that, at the time when said bonds and coupons were issued as aforesaid, and when all things were done which were done under the provisions of said act of February 21, 1881, namely, in the year 1882, Gunnison county already had, exclusive of all debts contracted or incurred before the adoption of said section 6, of article XI, of the constitution, and exclusive of all debts contracted for the purpose of erecting public buildings and making and repairing public roads and bridges, an out-
31 standing, valid, and subsisting indebtedness amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county as shown by the assessment-roll of said county for the year 1882, and that the question of contracting or incurring the alleged indebtedness represented by said warrants and bonds was never in any manner submitted to the electors of the county, and that each and every of said bonds, coupons of which are sued upon herein, were issued in excess of the limit prescribed by section 6, of article XI, of the constitution, and are therefore, illegal and void; and defendant avers that on said 1st day of December, 1882, bonds of Gunnison county, including the bonds, coupons of which are sued upon herein, were

issued as under the provisions of said act of February 21, 1881, amounting to one hundred and sixty-nine thousand seven hundred dollars ($169,700) while the assessed valuation of taxable property in the county at the time as shown by the assessment-roll of the county for the said year of 1882, amounted to only two million, three hundred and four thousand, nine hundred and fifty-five dollars ($2,304,955); and defendant avers that the said bonds so issued were divided into three series, to wit, "A," "B," and "C"—those of series "A" were for the sum of one thousand dollars each, those of series "B" for the sum of five hundred dollars each, and those of series "C" for the sum of one hundred dollars each, that of such bonded issue said bonds of series "A" for the sum of one thousand dollars each, were numbered consecutively from 1 to 154, inclusive, as required by section 2 of said act of February 21st, 1881; and defendant avers that said bonds were each and all of them plainly numbered in ink on the face thereof; that the coupons of the sum of forty dollars each, sued upon herein, were attached to bonds of series "A," and that the number on each of said bonds is shown by the plaintiff's complaint herein. And defendant avers that excluding all indebtedness of Gunnison county existing at the time of the issuance of said bonds on December 1st, 1882, the total assessed valuation of taxable property in the county at the time as shown by the assessment-roll thereof for the year 1882, being as aforesaid only two million, three hundred and four thousand, nine hundred and fifty-five dollars ($2,304,955) the total contracting power of the county and the total amount of bonds which could have been issued within the limit prescribed by section 6, of article XI, of the constitution of the State, would have been an amount equal to six dollars on each one thousand dollars of the assessed valuation of taxable property, or the sum of thirteen thousand eight hun-
32 dred and twenty-nine dollars and seventy-three cents ($13,829.73); and any debt contracted or bond issued in excess of this amount would have been void had there been no other indebtedness existing against the county at the time. And defendant avers that the purchaser of any of said bonds of series "A," the number of which was above thirteen, took such bond or bonds with notice on the face thereof, indicated by the number of the same, that the same was void, because issued in excess of the limit prescribed by the constitution of the State, said number being notice to all purchasers that in the issuance of the same, the limit prescribed as aforesaid had been exceeded; and defendant avers that all purchasers of coupons attached to said bonds took the same with like notice and defendant further says that all of the coupons sued upon herein, which, when issued, were attached to bonds of series "A," the number of which is above thirteen, are void, and that plaintiff, and all prior holders thereof, took them with the notice of such fact appearing from the number on the face of the bond, and that the bonds, coupons of which are sued upon herein, and which are void for the reasons stated, are numbered 9, 10, 11, 12, 13, 63, 64, 65, 66 and 98 series "A."

And for a tenth and further defense to the plaintiff's complaint

defendant alleges, that the several coupons sued upon herein and described in the complaint and the several bonds represented thereby are, each and all of them illegal and void, for the reasons hereinafter stated: that said bonds were made and issued on the 1st day of December, 1882, and purported to have been made and issued under the provisions of an act of the General Assembly of the State of Colorado, entitled "An act entitled 'An act to enable the several counties of the State to fund their floating indebtedness,'" approved February 21, 1881; that said bonds with said coupons attached were each and all of them made and issued in an attempt to fund floating claims against Gunnison county which were illegal and void, and which were represented by instruments in writing in the ordinary form of county orders or warrants; that said claims originated and said warrants were issued after the adoption of section 6, of article XI, of the constitution of the State of Colorado; that the constitution of said State embracing said section of said article was adopted in the year 1876, and that the county of Gunnison was created and established by an act of the legislature of Colorado on March 9, 1877; that none of said warrants nor any of the claims represented by them were contracted or made for the purpose of erecting public buildings, nor was the question of incurring or contracting the alleged debts or any of them, represented by said warrants ever in
33 any manner submitted to the electors of the county; that at the various times when said claims originated and when the said warrants were issued the assessed valuation of taxable property in said Gunnison county amounted to one million dollars and did not exceed five millions of dollars, as shown by the assessment-rolls of said county, and that when each and every of said claims originated and when each and every of said warrants were issued said county already had, exclusive of all debts contracted or incurred before the adoption of said section 6, of article XI, of the constitution, and exclusive of all debts contracted for the purpose of erecting public buildings and making and repairing public roads and bridges, an outstanding, valid, and subsisting indebtedness amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment-rolls thereof, and that each and every of the said claims and warrants were in excess of said constitutional limit; and the said county had no power or authority to contract said claims or issue said warrants, or any of them, and the attempt to contract such claims or to issue said warrants, or any of them, was in violation of said section 6, of article XI, of the constitution, and that said warrants and the claims represented by them, were, and are, therefore, wholly illegal and void. And defendant avers that the coupons sued upon herein are coupons of bonds issued in exchange for said illegal and void warrants and for no other consideration whatever, and that said bonds and coupons are, therefore, illegal and void.

And defendant furthermore avers that, at the time when said bonds and coupons were issued, as aforesaid, and when all things were done which were done, under the provisions of said act of Feb-

ruary 21st, 1881, namely, in the year 1882, said Gunnison county already had, exclusive of all debts contracted or incurred before the adoption of said section 6, of article XI, of the constitution, and exclusive of all debts contracted for the purpose of erecting public buildings and making and repairing public roads and bridges, an outstanding, valid, and subsisting indebtedness amounting to more than six dollars on each one thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment-roll of said county for the year 1882, which said assessed valuation of taxable property amounted to one million dollars, and did not exceed five millions of dollars, viz., the sum of two million, three hundred and four thousand, nine hundred and fifty-five dol-
34 lars ($2,304,955), and that the question of contracting or incurring the alleged indebtedness represented by said warrants and bonds was never in any manner submitted to the electors of the county, and that each and every of said bonds, coupons of which are sued upon herein, were issued in excess of the limit prescribed by said section 6, of article XI, of the constitution, and are, therefore, illegal and void.

And defendant further avers, upon information and belief, that the plaintiffs, in obtaining the coupons sued upon herein, took the same with actual notice and knowledge of all facts hereinbefore stated, and that all prior holders of said coupons and bonds took them with like notice and knowledge, and that the said bonds and coupons are wholly null and void.

Wherefore, defendant, having fully answered, prays judgment against the plaintiffs for its costs in this behalf laid out and expended, and for all other proper relief in the premises.

And defendant for an eleventh and further defense to plaintiff's complaint, alleges, that all the coupons sued upon herein and described in the complaint, and which, as shown by said complaint matured on the first day of March in the year 1889, and prior thereto, are barred by the statute of limitations of the State of Colorado, and especially by the provisions of section 1 of chapter LX, the same being general section 1671, page 596, of the General Laws of Colorado of 1877, and being section 1, chapter LXVI, and general section 2163, page 671, of the General Statutes of Colorado of 1883, which provides that

"The following actions shall be commenced within six years next after the cause of action shall accrue, and not afterwards: First, all actions of debt founded upon any contract or liability in action. * * * Fourth, all actions of assumpsit, or on the case founded on any contract or liability, express or implied."

For the reason that the cause of action did not accrue upon any or either of said coupons within six years next before the commencement of plaintiff's action herein, and defendant pleads the provisions of said statute in bar of plaintiff's action upon each and every coupon sued upon herein, which matured more than six years before the commencement of plaintiff's action herein.

Wherefore defendant prays judgment against the plaintiffs

as to all coupons sued upon herein which matured more than six years before the commencement of plaintiffs' action, and for all other proper relief in the premises.

THOMAS, HARTZELL, BRYANT & LEE,
T. C. BROWN & J. R. HINKLE,
Attorneys for Defendant.

STATE OF COLORADO, }
County of Gunnison, } ss:

J. R. Hinkle, being duly sworn, says that he is the attorney of the above-named defendant; that he has read the foregoing answer, and knows the contents thereof, and that the same is true, to the best of his knowledge and belief.

J. R. HINKLE.

Subscribed and sworn to before me this 30th day of Aug., 1895.
[SEAL.] C. T. SILLS,
Notary Public, Gunnison County, Colo.

My commission expires January 12th, 1899.

Indorsed: No. 3201. U. S. circuit court, dist. Colo. E. H. Rollins & Sons, a corporation, plaintiffs, *vs.* Gunnison County, defendant. Answer. Filed Sep. 10, 1895. Robert Bailey, clerk. Thomas C. Brown, att'y.

UNITED STATES OF AMERICA, }
State of Colorado, } ss:

Replication.

In the Circuit Court of the United States, District of Colorado.

E. H. ROLLINS & SONS, a Corporation, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Gunnison, Defendant. } No. 3201.

Now come the plaintiffs in the above-entitled cause, and, for replication to the answer of defendant herein, deny each and every allegation contained therein.

H. B. JOHNSON,
Attorney for Plaintiffs.

Indorsed: No. 3201. E. H. Rollins & Sons, a corporation, plaintiffs, *vs.* The Board of County Commissioners of the County of Gunnison, defendants. Replication. Filed Oct. 7, 1895. Robert Bailey, clerk. H. B. Johnson, attorney for plaintiffs.

Twentieth day.

FRIDAY, *November 29th, A. D.* 1895.

Present: Honorable Moses Hallett, district judge, and other officers as noted on the 5th instant.

36 Money demand.

E. H. ROLLINS AND SONS
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF Gunnison. } 3201.

At this day comes the plaintiff by H. B. Johnson, Esq., its attorney, and the defendant by W. H. Bryant, Esq., its attorney, also comes.

And thereupon by agreement of the said parties it is ordered by the court, that this cause stand continued to the next term of court.

Twelfth day.

TUESDAY, *May 19th, A. D.* 1896.

Present: Honorable Moses Hallett, district judge, and other officers as noted on the 5th instant.

Money demand on coupons.

E. H. ROLLINS AND SONS, a Corporation,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF Gunnison. } 3201.

At this day comes E. F. Richardson, Esq., and enters the appearance of Messrs. T. M. Patterson, E. F. Richardson, and H. N. Hawkins, attorneys of record of this court, for and on behalf of the said plaintiff.

Money demand on coupons.

E. H. ROLLINS AND SONS, a Corporation,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF Gunnison. } 3201.

At this day comes the plaintiff by H. B. Johnson, Esq., its attorney and the defendant by C. S. Thomas, Esq., its attorney also comes. And thereupon comes a jury, to wit:

C. L. Todd,	Bernard Robbins,
John B. Church,	G. O. Nevins,
J. C. Jenkins,	J. P. Crowley,
Charles C. Bendell,	James L. McHatton,
John W. Drake,	C. H. Scobey,
J. R. Ferris,	Henry Frankle,

twelve (12) good and lawful men, and they are duly selected and tried, empanelled and sworn, to well and truly try the matter at issue herein joined and a true verdict render according to the evidence.

37 And thereupon comes the evidence, the hearing of which is continued to the hour of adjournment.

And the said jurors being now each duly cautioned by the court, not to converse among themselves or with others touching this cause or the matters at issue herein or the evidence heard or any part thereof nor to listen to such conversation of others are permitted to retire to meet the court at its next incoming.

Thirteenth day.

WEDNESDAY, *May 20th, A. D.* 1896.

Present: Honorable Moses Hallett, district judge, and other officers as noted on the 5th instant.

Money demand on coupons.

E. H. ROLLINS AND SONS, a Corporation,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF Gunnison. } 3201.

At this day come again the said parties by their attorneys respectively and the said jurors being now all here present and in the jury-box, the trial herein is resumed.

And the said jurors having heard the evidence produced and being by the court thereto instructed upon their oaths do say they find the issues herein joined for the defendant.

Wherefore, it is considered by the court, that the defendant go hence hereof without day and have and recover of and from the plaintiff its costs by it in this behalf laid out and expended, to be taxed and have execution therefor.

And day until thirty (30) days from this day is allowed the plaintiff, within which time to file a bill of the exceptions reserved by it, upon the trial of issues herein joined.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States within and for the District of Colorado.

Trial to the court and a jury.

E. H. ROLLINS AND SONS, Complainants,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF GUNNISON County, Defendants. } 3201. Law.

Hallett, J., presiding.

Bill of Exceptions.

Be it remembered, that on Tuesday, May 19th, A. D. 1896, the same being one of the regular juridical days of the May term,
38 A. D. 1896, of said court, this cause came on to be heard before the court, and a jury, the complainants appearing by

H. B. Johnson and Patterson, Richardson and Hawkins, the defendants by Thomas, Bryant and Lee, the said jury being then and there duly empanelled and sworn to try the issues in said cause; the complainants to sustain the issues upon their part, offered the following oral and documentary evidence.

Mr. FRANK C. YOUNG, being called as a witness on behalf of the complainants, after being duly sworn, testified as follows:

Direct examination.

Mr. JOHNSON:

Q. Mr. Young, where do you reside?
A. In Denver.
Q. How long have you resided here?
A. Sixteen years.
Q. (Handing witness a printed document.) Will you examine that paper?
A. Yes, sir.
Q. Are you familiar with the signature of the officers who purport to execute that paper?
A. Yes, sir.
Q. You may state whether or not E. C. Teachout was chairman of the board of county commissioners at the time this paper was executed?
A. That is my recollection.
Q. You may state whether A. J. Bean was county clerk?
A. Yes, sir.
Q. And whether T. J. Maloney was county treasurer?
A. He was.

Whereupon counsel for complainants offered said paper in evidence; to which offer counsel for defendants then and there objected for the reason that this paper purports to be bond No. 1 of series A, of Gunnison County funding bonds, and is not one of the bonds which are sued upon in this action, or rather, not one of the bonds from which the coupons which are the subject of the action were cut and taken.

Mr. JOHNSON: I have already stated, if the court please, that the complainants in this action do not own the bonds from which the coupons sued upon were taken and we will not be able to offer those bonds in evidence; we offer this bond merely to show the form and recitals, etc., of the bonds, and we intend to follow this by showing
39 that they were all alike.
Whereupon the court overruled the objection; to which ruling of the court counsel for the defendants then and there duly excepted.

The COURT: What were the numbers of the bonds from which the coupons sued on were taken?

Mr. JOHNSON: 9 to 13 inclusive, 63 to 66, inclusive, and No. 98.

Thereupon said bond was received in evidence and marked Exhibit A and is hereto attached and made a part of this record.

Q. You may state whether or not you had some knowledge, and if so, to what extent, of this issue of bonds.

A. I had some knowledge from the fact that my firm at that time owned a good many of the warrants and we exchanged our warrants for that series of bonds; and a number of customers of ours also held warrants for which we got bonds in exchange.

Q. State whether or not you negotiated any of those bonds subsequently.

A. Yes, sir.

Q. From your knowledge of that issue of bonds you may state whether or not they were all in this form.

A. Well, in that form, but there were different series so as to make them convenient of exchange, some five hundred, some one hundred, but the same recitals, the same contents. They were all in the same form.

Q. They were all in the same form with the exception of the denominations?

A. With the exception of the denominations, yes.

Q. (Handing witness an envelope containing papers.) You may examine those papers and state whether or not they appear to represent coupons taken from that series of bonds.

A. Yes, sir, those are all coupons from bonds of that issue.

Counsel for complainants then offered said papers in evidence, as being the coupons upon which the suit is brought.

Mr. THOMAS: We shall make a general objection to the introduction of these coupons upon the ground that the bonds from which they were taken are not produced, and there is no evidence that they were cut from any bonds that were issued by the county of Gunnison, and they seem to have the name of T. J. Maloney lithographed upon them; there is no signature such as is required by law upon any of them; and also because they are incompetent and immaterial.

40 Mr. BRYANT: We have pleaded the statute of limitations to some of them, and we now make that objection to such of them as it will apply to.

The COURT: I think we had better receive this testimony as it comes along, with your objection, and consider the constitutional questions after the plaintiff's testimony is all in.

Whereupon said coupons were received in evidence and marked as Exhibit B, and are hereto attached and made a part hereof.

Cross-examination.

By Mr. THOMAS:

Q. You say you had some knowledge of the issue of these bonds by reason of the fact that they were bought by the firm of which you were a member, and that some of the bonds were exchanged for warrants?

A. Yes, sir.
Q. What was that firm?
A. Rollins and Young. The Rollins was Edward W.
Q. Is he one of the officers and stockholders of the plaintiff company here?
A. I presume so.
Q. Edward W. Rollins?
A. Yes, sir.
Q. Are you a stockholder or an officer or member of the firm of E. W. Rollins and Sons?
A. No, sir.
Q. Did you know N. T. Seeley in his lifetime?
A. Yes, sir.
Q. Was he a member of the firm of Rollins and Young?
A. No, sir.
Q. Was he in their employ in 1882?
A. Yes, sir.
Q. Now, did not the knowledge which you obtained of this bond issue come largely through Seeley?
A. Yes, sir.
Q. Was he not over in Gunnison county participating in the preliminaries to the issue of these bonds?
A. My recollection is that he did a good part of the work.
Q. As the representative of your firm?
A. Yes, sir.
Q. You say that you also negotiated some of these bonds?
A. Oh, yes in the regular course of business, bought and sold bonds of all kinds.
Q. The business of Rollins and Young was handling county securities, bonds, etc., very largely, was it not?
41 A. Yes, sir.
Q. When did that firm dissolve?
A. The 31st of December.
Q. 1886?
A. I think 1886, or '87.
Q. Well, some time after the issuance of these bonds?
A. Yes, it is four or five years after. Four years.

Mr. JOSEPH STANDLEY, a witness called and sworn on behalf of the complainants, testified as follows:

Direct examination.

By Mr. JOHNSON:

Q. Give your full name to the stenographers?
A. Joseph Stanley.
Q. Where do you reside Mr. Stanley?
A. 930 14th street, Denver.
Q. How long have you resided in Denver?
A. About eleven years.
Q. You may state whether you were ever the owner of bonds

numbered from 9 to 13, 63 to 66 and 98 known as funding bonds of Gunnison county?

A. I was.

Q. You may state how you became the owner of them?

A. I had some warrants and when the county funded I turned in my warrants for bonds No. 9 to 13, afterwards I bought bonds No. 63 to 66, and bond No. 96 of the thousand-dollar issue.

Q. Making in the whole ten thousand dollars of principal?

A. Making ten thousand dollars of principal.

Q. Through whom did you prosecute the business of exchanging these warrants for bonds?

A. Mr. Rollins and Young.

Q. Did you take any active part in the matter yourself?

A. No, sir; I did not.

Q. Had you any knowledge of the amount of bonds that were being issued by Gunnison county in funding?

Objected to by counsel for defendants, that the witness is presumed to take knowledge of what the record shows.

Which objection was by the court overruled; to which ruling of the court counsel for defendants then and there duly excepted.

A. I had not. No, sir.

Q. You may state when you purchased these other five bonds?

42 A. I purchased them in June, 1883.

Q. Do you know whether the county had paid interest on those bonds prior to your purchase?

Objected to by counsel for defendants, because immaterial and incompetent.

Which objection was by the court overruled; to which ruling of the court counsel for defendants then and there duly excepted.

A. I would not be positive about that; I think they had.

Q. Do you remember whether you collected the interest represented by the first coupon, or whether that had been taken off the bond when you purchased it?

A. I don't remember about that.

Q. Had you any notice or knowledge that there was anything irregular or illegal about the issuance of those bonds; any actual notice?

Counsel for defendants objected to the question for the same reasons above stated.

Which objection was by the court overruled, to which ruling counsel for defendants then and there duly excepted.

A. I had not.

Q. Do you remember what you paid for these five bonds that you bought in June, 1893?

Objected to because immaterial and incompetent.

Which objection was by the court overruled, to which ruling counsel for defendants then and there duly excepted.

A. I paid ninety-eight cents on the dollar.

Q. As I understand you were the actual holder for value of the warrants that were exchanged for the first five bonds?

A. I was.

Q. When did you make that exchange; that is to say, how soon after December 1st, 1882, did you receive your bonds in exchange for the warrants?

A. I could not give you dates.

Q. Up to what time did you remain the owner of those ten bonds?

A. Up to June, 1892.

Q. To whom did you then transfer them?

A. To E. H. Rollins and Sons.

Q. (Handing witness a paper.) State whether or not that is a check that you know anything about.

A. Yes, sir.

Q. Are you the payee in that check?

A. I am.

43 Q. Is that your indorsement on the back of it?

A. Yes, sir.

Q. You may state whether or not the consideration for the transfer of these ten bonds was embraced in that check.

A. It was.

Q. You may state for what consideration if any other than these bonds this check was received.

A. It was received for some—I think upon some county bonds in some county in New Mexico.

Q. You may state for what amount you sold these ten bonds and the coupons attached thereto.

A. Fourteen thousand dollars.

Q. You may state whether or not this paper attached to the check is a correct statement of the consideration for which you received the check.

A. It was.

Whereupon counsel for complainants offered said check in evidence; which was received without objection, and marked Exhibit C.

Cross-examination of Mr. STANLEY.

By Mr. THOMAS:

Q. You say, Mr. Stanley, that you exchanged warrants which you held at the time for bonds numbered 9 to 13 inclusive?

A. Yes, sir.

Q. That would be five bonds?

A. Yes.

Q. You had five thousand dollars' worth of warrants did you?

A. Yes, sir.

Q. And afterwards you bought the other bonds—that is, 63 to 66 inclusive, and number 98?

A. Yes.

Q. Now, Mr. Stanley, who sold you the warrants for which you obtained the first five bonds?

A. Rollins and Young, I think I bought them from Rollins and Young.

Q. Yes, sir; you bought the warrants from them and they made the exchange for you, did they not?

A. Yes.

Q. Were they not at that time your agents and representatives in the matter of the Gunnison County warrants and bonds?

A. No, sir; they were not my agents that I know of.

Q. Were they your brokers?

44 A. Well, you might term them so, they made the transfer with my consent of their warrants for the bonds.

Q. But, did they not originally purchase the warrants for you as brokers and then hold them and make the transfer for you?

A. No, sir; I bought the warrants from them.

Q. You bought the warrants from them; after buying the warrants from them did you leave the warrants with them?

A. Yes, sir.

Q. How long before you exchanged them for these bonds did you buy them?

A. I don't remember.

Q. It was about the same time, was it not?

A. No; it was some time afterwards.

Q. Was it some months before or some days?

A. Some months before.

Q. Did you buy them before you learned that they would probably be funded?

A. I did.

Q. Now, when you bought the other bonds, 63 to 66 and No. 98, did you buy them from Rollins and Young?

A. Yes, sir.

Q. And after buying them from Rollins and Young did you take possession of them or leave them with them to collect the interest and look after them generally?

A. I left them with them to collect the interest.

Q. And you say you paid ninety-eight cents on the dollar for them?

A. Yes, sir.

Q. How long do you say you held those bonds Mr. Stanley, about how long?

A. Why, I held the first of them about ten years and the others about nine.

Q. You held them all until about the time when you sold them to the Rollins and Sons company or corporation at the time this check was given to you?

A. Yes, sir.

Q. Now, at the time you purchased those bonds were they not guar-

anteed to you by Rollins and Young and did they not afterwards, and did not the corporation which succeeded Rollins and Young afterwards take them back off your hands, these New Mexico bonds?

A. No, sir.

Q. How was it that you sold them to Rollins and Young, or rather to the Rollins and Sons corporation?

A. Because I wanted the money for them.

45 Q. And they were in the market and bought them?

A. Yes, sir.

Q. Was that the only reason you sold them, that you wanted the money for them?

A. Yes, sir.

Q. And that was a *bona fide* consideration was it?

A. It was.

Q. This money that was transferred to you was not transferred back to Rollins and Young?

A. No, sir.

Q. Nor any other money in place of it?

A. Nor any other money.

Q. Nor any other check?

A. Nor any other check.

Q. Did you own those bonds and coupons from the time you got them until you sold them to the Rollins and Sons corporation?

A. I did.

Q. Mr. Stanley, don't you know that these coupons which form the subject-matter of these suits, on all these bonds which fell due September, 1886, March, 1887, September, 1887, and March, 1888, formed the subject matter of a suit brought in this court by A. D. Potter against the board of county commissioners on the 13th day of April, 1888?

A. I know there was a suit brought, I don't remember the gentleman's name in whom it was brought.

Q. Did you own those bonds when Mr. Potter brought that suit here as the owner and *bona fide* holder?

A. I did.

Q. Why was that suit brought in the name of Mr. Potter as the *bona fide* holder of these identical coupons?

A. They were pooled together to save the expense of so many different suits.

Q. And as a matter of fact then, Mr. Potter did not own them at all when that suit was brought?

A. No sir.

Q. But you knew that he brought the suit upon them, and that he brought it as the *bona fide* holder, didn't you?

(No answer heard.)

Q. Now wasn't it the fact that he brought the suit for you, as the *bona fide* holder, because he was a non-resident of the State and you were a citizen of Colorado?

A. No, sir.

Q. It was not?

A. No, sir.

Q. After that suit was dismissed, don't you know that two other suits were brought here on coupons which were due, and
46 which are in suit here and which included in addition to the coupons that were in the Potter suit those that matured in March and September of 1888, March and September of 1889, March and September of 1890, March and September of 1891 and March and September of 1892?

A. Yes, I knew there was another suit brought very similar to the first one.

Q. Did Sanders and Proby own these coupons at the time they brought these suits I have last called your attention to, or did you own them?

A. I owned them.

Q. Why was it they brought the suits upon these coupons in this court?

A. For about the same reason, to save expense; I made another pool.

Q. Isn't it the fact that the last pool was represented by the bringing of twenty-one or twenty-two suits, while the first was represented by the bringing of only one or two?

A. I don't know about that.

Q. At the very time these suits were pending here which I last called your attention to, by Saunders and Proby, they claiming to be the owners of the coupons, didn't you sell them to the Rollins and Sons corporation?

A. Well, I don't know just when that suit was pending; I sold them, as stated.

Q. The suit was brought on the 28th of February 1893?

A. Well, I sold them.

Q. It was after you sold them to the company Rollins and Sons, the plaintiffs in this case, wasn't it?

A. Yes.

Q. Now do you know that one of these suits is still pending that was brought then in the name of Saunders upon these coupons?

A. I do.

Q. And yet you say you made a *bona fide* sale of this property for the first time to the Rollins and Sons corporation in June of 1892?

A. Yes, sir.

Q. Can you give any reason for the fact that these suits were brought by men who claimed to be *bona fide* owners of these coupons, except the one you have assigned here?

A. No, sir.

Q. Did you sell these bonds as well as the coupons to E. H. Rollins and Sons?

A. I did.

Q. As far as you know then, they have been the owners of the bonds as well as the coupons from which the bonds were cut, ever since that time?

47 A. So far as I know.

Q. You then have no interest at present in this suit one way or the other, have you Mr. Stanley?

A. None whatever.

Q. There is no contract existing between yourself and the plaintiffs by means of which in the event they lose this suit you would be liable?

A. No.

Q. The sale that you made at that time is *bona fide* and absolute?

A. Yes, sir.

Q. I believe you said that you knew these Proby and Sanders by whom the cases were brought?

A. I believe I did.

Q. Were you in that pool-paying part of those expenses?

A. No, sir.

Q. So that the expenses you were in had reference to the Potter suit entirely?

A. Yes, sir.

Q. You say you had no notice of any defect or invalidity upon these bonds; I believe I understood you to say that didn't I?

A. I did.

Q. Did you ever go to Gunnison for the purpose of looking at the records?

A. No, sir, I did not.

Q. Did you ever authorize anybody to do it for you?

A. No, sir.

Q. Did you ever know or pretend to know what the records of the county recited in reference to the amount of the county's indebtedness or the manner in which these bonds were issued?

A. I did not.

Q. Did you say also that you had no knowledge of the amount of bonds that had been issued?

A. I did.

Q. Now Mr. Stanley, when you bought these bonds which were numbered 63 to 66 and 98, you knew, did you not, that at least ninety-eight thousand dollars' worth of bonds had been issued; didn't you know it from the number of the bonds?

A. Of course I knew from the number of the bonds they had issued, up to ninety-eight, but I did not know what the amount of each bond was.

Q. No, but you knew that 98 bonds of series A, of a thousand dollars each had been issued, didn't you?

A. Oh, yes.

Q. You had the bonds didn't you?

A. Yes.

48 Q. Now, didn't you know as a matter of fact that that series included more bonds than that number, ninety-eight?

A. No, I did not know how much it did issue.

Q. Did you know that it included more than the number 98 that you bought?

A. No, I didn't know that it did; I had not seen any higher number than that.

Q. Didn't you know that the fact that there was a series A, implied that there were other series of other bonds also?

A. Oh, I suppose I did.

Q. As a matter of fact, then, you have had a good deal to do, have you not Mr. Stanley, in the way of buying and selling county securities?

A. Well, not so very much.

Q. You have had some experience in that line have you not?

A. I had had but very little up to that time.

Q. But still you had enough, did you not, to know that when you saw a bond marked series A, that it implied that there were other series of the same issue?

A. Yes, sir.

Q. So that in addition to knowing that there were ninety-eight thousand dollars' worth of this issue, you knew that there were probably other series of the same issue?

A. Yes, sir.

Redirect examination of Mr. STANLEY.

By Mr. JOHNSON:

Q. Mr. Stanley, have you any information, notice or knowledge as to whether these bonds were issued and numbered consecutively from one up to thirteen?

A. No, sir, nothing only supposition.

Q. Well, did you make any supposition on the case at all; did you consider that matter at all at the time you purchased these bonds?

A. Why, I supposed that there was at least that amount of bonds issued, or else they wouldn't be numbered in that way.

Q. Well, had you any knowledge that these bonds were, or were required to be numbered consecutively?

A. Not necessarily.

Q. One other question I did not ask you, that is, as to whether the county of Gunnison paid interest on these bonds, and if so, for how long?

Mr. THOMAS: We object for the same reasons assigned to the questions asked before, and that it is immaterial and incompetent.

49 Which objection was by the court overruled, to which ruling of the court counsel for defendants then and there duly excepted.

A. They did pay interest on those bonds.

Q. For what length of time?

A. I don't know anything about the time.

Q. Do you remember up to what number of coupon?

A. No, sir; I do not.

Q. Do you know whether all the coupons up to six and part of seven were paid or not?

A. I wouldn't be positive about that; I think they were, but I wouldn't be positive.

Q. You received, then, some interest on these bonds for some years?

A. Yes, sir.

Recross-examination of Mr. STANLEY.

By Mr. THOMAS:

Q. Were not these amounts of interest paid up to about the time that the Lake County funding bonds were held void and annulled; wasn't it about that time that the officers of Gunnison county suspended payment upon the coupons upon these bonds?

A. I don't know about that.

Mr. GEORGE H. TAYLOR, a witness called on behalf of the complainants, after being duly sworn, testified as follows:

Direct examination.

By Mr. JOHNSON:

Q. Mr. Taylor, give your full name to the stenographers?

A. George H.

Q. Where do you reside?

A. Temporarily in Brookline, Massachusetts.

Q. Are you familar with this issue of Gunnison County funding bonds?

A. I am.

Q. Have you any knowledge of a transaction by which E. H. Rollins and Sons became the owners of these bonds from which the coupons in suit in this case were taken?

A. I have, yes, sir.

Q. You may state whether or not at the date of the transaction of the deal for which this check was given, Rollins and Sons became the owners of these bonds?

A. Rollins and Sons became the owners of the bonds.

50 Q. You may state whether or not they are now the owners of the coupons upon which this suit was brought?

A. They are, yes, sir.

Q. Is E. H. Rollins and Sons a corporation?

A. Yes, sir.

Q. Organized under the laws of what State?

A. New Hampshire.

Q. You may state whether or not Rollins and Sons have been the owners of these coupons that I have introduced in evidence, since the date of this purchase?

A. Yes, sir.

Cross-examination of Mr. TAYLOR.

By Mr. THOMAS:

Q. Who is the principal officer of the plaintiff corporation?

A. Edward W. Rollins.

Q. Is that the same Rollins who was a member of the firm of Rollins and Young?

A. Yes, sir.

Q. Formerly doing business in this city?

A. Yes, sir.

Q. And he was the principal officer of the company at the date of this purchase?

A. Yes.

Mr. THOMAS HENRY REYNOLDS, a witness called on behalf of the complainants, after being duly sworn, testified as follows:

Direct examination.

By Mr. JOHNSON:

Q. Mr. Reynolds, you may state whether or not you have made a computation of the amount that is due at the present time on the coupons in suit in this case?

A. I have.

Q. You may state whether or not you have made a separate computation in regard to those that had matured more than six years before the institution of this suit, and those that matured within that six years?

A. Yes, sir.

Q. You may state what the amount, according to that computation, is that is now due upon the coupons that have matured within the six years from the bringing of the suit?

A. $5,305.30.

Q. And what would be the aggregate amount due upon all of the coupons?

A. $9,718.80.

51 Q. At what rate of interest did you make this computation?

A. Eight per cent.

Q. You made the computation from the maturity of the coupon?

A. From the maturity of the coupon until this date.

Cross-examination of Mr. REYNOLDS.

By Mr. THOMAS:

Q. Have you computed simple interest, or have you compounded the interest?

A. Simple interest.

Q. No computation of interest upon interest was it, this sum?

A. No, sir.

Mr. GEORGE H. TAYLOR, being recalled by complainants, testified as follows:

Direct examination.

By Mr. JOHNSON:

Q. Mr. Taylor, you may state whether or not the corporation of Rollins and Sons now owns the bonds from which these coupons were taken.

A. They do not.

Q. Are they in possession of them?

A. No, sir.

Q. You have no control over those bonds and are not able to produce them?

A. None whatever.

Q. You may state what, if any knowledge you have in regard to these coupons having been actually cut from those bonds.

A. They are the coupons that were detached from the bonds bought from Mr. Stanley.

Cross-examination of Mr. TAYLOR when recalled.

By Mr. THOMAS:

Q. Mr. Taylor, who does own those bonds?

A. We sold them to E. B. Shepherd and Company of New York.

Q. When?

A. Some time a few months after they were bought, in the summer of 1892.

Q. You are actively connected with the business of the plaintiff in Boston, are you not?

A. Yes, sir.

Q. And have been for some time?

52 A. Yes, sir.

Q. Has the plaintiff made any effort to ascertain whether Shepherd & Company still own these bonds?

A. No.

Q. Has any effort of any kind been made to locate them so that they can be produced here, to identify those coupons?

A. No, sir.

Whereupon complainants rested.

Thereupon the defendants, to sustain the issues herein joined on their part, produced the following evidence:

Mr. THOMAS: We first wish to offer the complaint and record in the case of Andrew Potter against The County Commissioners of Gunnison County, numbered 2267, being the suit to which the attention of the witness Stanley was called, together with the record of the dismissal of the same on the third day of April, 1893. We also wish to introduce the record in the case of James W. Proby against Gunnison County, filed on the 28th of February, 1893, being the suit brought for the recovery of all the coupons in issue here which

were due up to the date of the bringing of the same, and which was dismissed on the 9th day of October, 1894. We also wish to introduce the record in the pending case of William D. Saunders against The Board of County Commissioners of Gunnison County, brought on the 28th day of February, 1893, on some of these coupons, and we have a list of them separate, so that we can distinguish, the bonds in 2813 being 66 and 98, that is, the coupons from the bonds.

The COURT: You say that is a pending case?

Mr. THOMAS: That is now pending; yes, sir.

The COURT: What is the number of that?

Mr. THOMAS: 2913. And brought also on the 28th of February, 1893.

Mr. RICHARDSON: Are you certain about the Saunders case being on the same coupons?

Mr. THOMAS: 68 and 98, so I am informed, I have not gone over them carefully.

Mr. JOHNSON: If the court please, we object to the introduction of these records, not because we care anything about their contents, but because it will greatly incumber the record in this case, and for the reason that they are wholly unnecessary, the facts being entirely admitted by the testimony of the plaintiffs, that these suits
53 were brought, perhaps improperly brought and dismissed. I have had occasion to explain to the court how and why that was done, that these suits were brought without much reference to the ownership of these bonds and coupons supposing that the merits of the cause turned upon other questions, brought as suits are very frequently brought, for the purpose of consolidating.

The COURT: I do not think it is necessary to discuss this, we do not care to receive these records, having been already stated; the objection is sustained. The facts have already been stated by the witnesses and so it is not necessary to put in these records.

Mr. THOMAS: I am satisfied with that if it is full enough, but I do not understand that the questions asked the witness were specific as to the dates of the case, and also as to the different coupons in the case.

The COURT: For its deficiency in that respect we will accept your statement as to the time when the suits were brought and dismissed.

Mr. THOMAS: We now desire to offer a certified copy of the abstract of the assessment or amount of the assessment of the property in Gunnison county for the years 1880, 1881 and 1882, our purpose being to show the time when the valuation of the county reached the million-dollar limit fixed by the constitution, and also the amount of the assessed valuation of the property in the county for the year in which these bonds were voted and issued. That of 1880 is the last one which shows the valuation of the county to be less than a million, 1881 being the first year in which the million-dollar limit was reached and passed, being the one immediately preceding the issue of these bonds. I may say that we have also ordered duplicate copies of these assessments from the auditor of State and they will be in our hands before the case is finally closed; they

tally, however, exactly, so far as amounts are concerned. We will have the official publication here to demonstrate that fact and will follow it up by certified copies as soon as they come to hand.

Mr. JOHNSON: If the court please, I understand it to be conceded by the defendants that prior to the year 1881 the assessed valuation of Gunnison county had not reached a million dollars.

Mr. THOMAS: Yes, sir.

Mr. JOHNSON: We make the general objection to the introduction of these assessments, upon the ground of immateriality.

54 Mr. THOMAS: The assessed valuation of Gunnison county in 1880, as shown by the abstracts, is $596,583; in 1881 the assessed valuation is shown to have been $1,266,962, and in 1882, on the 25th of August, 1882, the total assessed valuation of the county was $2,340,955.

Whereupon said certified copies of the abstracts of the assessments of Gunnison county for the years 1880, 1881 and 1882 were received in evidence, and marked as Exhibits D, E, and F, respectively.

Mr. THOMAS: We now wish to offer a certified copy of the financial statement of the condition of Gunnison county for the six months ending December 31st, 1881, showing the total indebtedness of the county of Gunnison at that time.

Mr. JOHNSON: We object to the semi-annual statement of December 31st, 1881, upon the following grounds. First, the bonds having been issued on the first day of December, 1882, the semi-annual statement of June 30th, 1882, would be the material statement, if any one would be, and this one is not material.

Second. That it has not been shown that this semi-annual statement was published in a newspaper or by posting as the law requires, and that the recording thereof is only authorized in regard to a semi-annual statement that has thus been published.

Third. That the statement on its face is not in compliance with the statute, and is not sufficient to bring home to the purchaser of bonds any actual knowledge of the indebtedness that is outstanding and particularly any knowledge of the validity or invalidity of such indebtedness.

Fourth. Because the semi-annual statement provided by a certain statute is not required to be kept, either by the constitution or by the statute under which these bonds were issued, and therefore the purchaser cannot be required to take any notice of the same.

Fifth. Because the funding act under which these bonds were issued vested in the board of county commissioners the power to compute the amount of the valid outstanding indebtedness of the county and to make a certificate in reference thereto, and these bonds having recited on their face that they were issued to fund valid floating indebtedness, a purchaser would not be bound to investigate this record.

Sixth. Because this semi annual statement offered in evidence does not attempt to show when the indebtedness mentioned therein was contracted or whether it was contracted prior to the

55 adoption of the constitution or after such adoption, or whether it was contracted prior to the time the assessed valuation of

the county reach a million dollars, or after that time, and that for these various reasons a purchaser would actually receive no notice or knowledge from the face of this semi-annual statement as to whether this indebtedness that was being funded by the issuance of these bonds was valid or invalid.

Seventh. Because said indebtedness has been validated by constitutional amendment.

The COURT: We will receive the statement; some of these matters will be considered further on.

To which ruling of the court counsel for complainants then and there duly excepted.

Whereupon said statement was received in evidence, and was marked Exhibit G, and is hereto attached and made a part of this record.

Mr. THOMAS: We will offer a similar certified copy of the financial statement of Gunnison county for the six months ending June 30th, 1882.

Mr. JOHNSON: We desire to object to the introduction of this record for all the reasons stated heretofore that are applicable.

Which objection was by the court overruled, to which ruling of the court counsel for complainants then and there duly excepted.

Whereupon said statement was received in evidence and marked Exhibit H, and is hereto attached and made a part of this record.

Mr. THOMAS: We also desire to offer a similar certified copy of the statement of the condition of Gunnison county for the six months ending December 30th, 1882, for one month beyond the time when the bonds were issued five months previous.

Objected to by counsel for complainants, for all the reasons heretofore stated, and for the additional reason that it was made after the issuance of these bonds.

Which objection was by the court overruled, to which ruling of the court counsel for complainants then and there duly excepted. Said statement is hereto attached marked Exhibit I.

Mr. THOMAS: We now ask leave to introduce a certified copy of the official proceedings of the board of county commissioners
56 under the funding act of February, 1881, under which these bonds were issued, duly certified by the clerk and recorded to be correct.

Mr. JOHNSON: We object to the introduction of these orders and proceedings of the board of county commissioners upon the ground that under the funding act a purchaser of bonds with recitals such as are contained in this bond would not be required to take notice of the procedure of the board leading up to the actual issue and execution of the bonds; that the recitals in the bonds as to the antecedent proceedings or the regular procedure will be conclusive.

The COURT: Do these proceedings contain the statement Mr. Johnson referred to as being required by the funding act?

Mr. THOMAS: Statement as to the indebtedness?

The COURT: Yes, sir.

Mr. THOMAS: Yes, sir.

The COURT: Does that correspond to the other statements that were put in that were similar?

Mr. THOMAS: I don't know as to that, but we have the clerk and recorder here; we will make a computation and determine that immediately after we adjourn.

The COURT: Look it over and see; I would like to know if it corresponds with the statements of December, 1881, and June, 1882, and December, 1882.

Mr. THOMAS: We also have the warrants that were issued between these dates, to show the accumulated amount of indebtedness.

Said certified copy of official proceedings of county commissioners is hereto attached, marked Exhibit J, and the same was admitted in evidence, to which ruling plaintiff duly excepted.

Mr. T. J. MALONEY, a witness called on behalf of the defendants, after being duly sworn, testified as follows:

Direct examination.

By Mr. THOMAS:

Q. Mr. Maloney, where do you live?

A. Cripple Creek, Colorado.

Q. Did you hold any official position in the county of Gunnison, in this State, during the years 1882 and 1883?

A. I was treasurer the latter part of 1882 and all of 1883.

57 Q. How long prior to the time of your election as treasurer were you in Gunnison county, about how long?

A. Two years and a half.

Q. Were you in 1882 acquainted with the firm of Rollins and Young?

A. I became acquainted with them in 1882, yes.

Q. Did you know Mr. N. P. Seeley during his lifetime?

A. Yes, sir.

Q. Were you in Gunnison county during the period covered by the time when the question of funding the warrants was submitted to the people at the election of November, 1892, and the subsequent issue of the warrants?

A. Yes, sir.

Q Did you know Mr. N. P. Seeley at that time?

A. During the election?

Q. Yes, sir.

A. I did not.

Q. About how long afterwards?

A. I first met Mr. Seeley when he came to my office to get the warrants for the—or, to get the bonds that were to be issued in lieu of a lot of warrants that he had.

Q. That was about what time?

A. That was some time in December, 1882, I think, probably the early part of the month.

Q. Do you know whether Mr. Seeley had anything to do with or

participated in the proceedings which led up to the vote that was taken upon the question of funding indebtedness?

A. I understood from Mr. Seeley that——

Mr. JOHNSON: We object to what Mr. Seeley said.

Mr. THOMAS: It has already been testified that he was the agent of Rollins and Young, your honor.

The COURT: I do not think his declarations can be given.

Mr. THOMAS: I make an offer to show by the witness that N. P. Seeley, the agent of Rollins and Young, at the time he applied to the witness for an exchange of warrants for bonds under this issue, informed the witness that he had been identified and actively connected with all the proceedings leading up to the election at which the question of the funding of indebtedness was submitted.

Counsel for complainants renewed their objection.

The COURT: We will reject that.

To which ruling of the court counsel for defendants then and there duly excepted.

58 Q. You say Mr. Seeley applied to you after the first of December for the exchange of warrants with bonds?

A. Yes, sir, I am quite sure it was after the first of December; I went into office the latter part of November, and it was between that time and the first of January that he applied.

Q. State whether or not the bonds constituting the issue of December, 1882, were all exchanged with Mr. Seeley for warrants.

A. I would like to refresh my mind on one thing; do these bonds bear the date of December 1st, 1882, or were they issued at that date, and then I can get my recollection clear?

Mr. THOMAS: They are all dated on the first of December, 1882.

Mr. JOHNSON: This one is; whether they were all dated that date we do not know.

Mr. THOMAS: The testimony was that this was a duplicate of all the others; it was upon that theory I understand the court received it.

Q. The question is whether at the time Mr. Seeley applied to you for an exchange of warrants for bonds he received all the bonds which were issued and exchanged warrants for them?

A. He received bonds for the amount of warrants that he had at that time.

Q. Do you know how much that was?

A. In the neighborhood of forty-nine thousand.

Q. Do you remember what series they were?

A. Series A, B, and C.

Q. Did he receive bonds for each of the series?

A. I think he received a few for B and C, but almost the entire issue for series A, one-thousand-dollar dimensions.

Q. That is, almost all that he received were of that issue?

A. All series A, yes, sir.

Q. About forty thousand in all?

A. About forty thousand in all.

Q. Can you state whether he received the first issue, whether he received the first bonds that were issued?

A. He received the first of the series.

Q. The first that were issued?

A. Yes, his bonds commenced with No. 1.

Q. As I understand you cannot state the amount of each series now that he received?

A. Not to a dollar certainly.

59 Q. Can you state, Mr. Maloney, whether Mr. Seeley turned in to you at the time a list of the warrants which he exchanged for the bonds you issued?

A. He did.

Q. What did you do with that list?

A. I think it was kept in my office, I am quite sure it was; when I went out of office it was there.

Q. When you went out of office the list was still there?

A. Still there, or it has been filed in the county clerk's office, but I think not, I think it was in my office.

Cross-examination of Mr. MALONEY.

By Mr. JOHNSON:

Q. You may state, Mr. Maloney, whether or not these bonds were delivered to Mr. Seeley and to other parties from time to time as warrants came in to be exchanged for them.

A. You mean these bonds that were issued at that time, the forty-nine thousand referred to?

Q. No, this issue of bonds, this entire issue.

A. Yes, it was delivered to anybody who came in with warrants that came within the time the funding was supposed to cover, if they had enough to make up a bond of one of the series.

Q. Do you remember, for instance, how many bonds were actually delivered in the year 1882?

A. No, I do not, but the greater part of the issue was.

Q. Well, had these bonds all been issued and signed up on the 1st of December, 1882, or were they left to be signed up from time to time as warrants came in, do you remember that?

A. They were left to be signed up from time to time as warrants came in.

Q. Some were not signed the first of December?

A. I don't think any of them are.

Q. And these bonds which Mr. Seeley had received were actually signed when he produced the warrants?

A. It took a week or ten days to finish up; they were taken in some time in December not prior to the first, because I think I took the office on the 29th of November, and he came in about two weeks afterwards.

Q. Do you remember how much of that issue of bonds had actually been signed and delivered in the year 1882?

A. No, I do not.

Q. Were any of the bonds signed and delivered in the year 1882, except these to Mr. Seeley?

60 A. Yes, I am sure there was more, but I don't remember how much.

Q. Do you remember how long it was before the entire issue had been signed and delivered?

A. It was over a year.

Q. Now, didn't it extend a long time in the year 1884 before they were all issued?

A. I am quite sure there was none issued in the year 1884, but not absolutely certain of it.

Q. When these bonds were issued were they all issued of the date December 1st, 1882?

A. Yes, all of that date.

Q. And how about the interest they drew up to the time of the delivery?

A. We stopped the interest on the warrants December 1st, 1882, is my remembrance of it.

Q. And let the interest run on the bonds?

A. Either that or the coupons cut off, I don't know which; I know there was no double interest allowed.

Q. Then, if I understand, the bonds were not issued as an issue, but were simply signed and delivered in exchange for warrants from time to time as they were issued?

A. My understanding was that it was an issue, at the time they were issued.

Q. How is that?

A. I understood it to be an issue, a limit of so much being put on it, and of course the warrants could not all probably be brought in in time to issue them all at once, and we of course issued bonds whenever a man brought in enough to cover a series.

Q. I am not speaking of theory, but as a matter of fact were these bonds issued and signed up until warrants came in to be exchanged for bonds?

A. I never seen any of them until the warrants came.

Q. What is your knowledge in regard to the chairman of the board of county commissioners, and the county clerk?

A. I understood that the chairman of the board of county commissioners signed all of the warrants in the month of December, before the first of January; whether the county clerk did or not I don't know, but I understand the chairman of the board of county commissioners to have done so.

Q. And then what became of those bonds?

A. They were held in the custody of the county clerk until the warrants came in, or until an application was made for bonds.

Q. But you did not, as county treasurer, countersign the bonds except as they were ready for exchange and delivery?

A. No.

61 Q. And that transaction lasted from December, 1882, to some time in 1884?

A. I think it lasted as long as 1884, I am not quite sure of that; it lasted fully all of 1883.

Redirect examination of Mr. MALONEY.

By Mr. THOMAS:

Q. Do I understand you that the bonds were issued at one time, and signed and delivered as called for by the holders of warrants covered by the issue?

A. The bonds were issued, as I understand it, the first of December.

Q. And delivered in exchange for warrants as they came in?

A. As they came in. They went through my office, and of course until the warrants were delivered to me I could not countersign the bonds nor register them.

Q. So that, as they came in in exchange for warrants you signed and delivered them?

A. Yes.

Q. And paid interest on the bonds?

A. I think we paid interest on the warrants up to the first of December, and let the interest on the bonds commence after that.

Recess for noon.

2 o'clock p. m., the further trial of this cause was continued as follows:

Mr. THOMAS: We have the certified copies of the abstract of assessment from the office of the auditor of State similar to those from the clerk and recorder of Gunnison county, which we would like to offer showing the assessed value for the two years; simply a different method of proving the same thing.

There is some question as to whether the State records or the county records are the best evidence.

To which offer counsel for defendants interposed the same objection as before.

Which objection was by the court overruled, to which ruling of the court counsel for complainants then and there duly excepted.

Said papers were then received in evidence marked Exhibits M, N, and O, respectively.

Mr. —— MCCORMICK, a witness called on behalf of the defendants, after being duly sworn, testified as follows:

62 Direct examination.

By Mr. THOMAS:

Q. Mr. McCormick, where do you reside?

A. Gunnison, Colorado.

Q. How long have you been a resident of that county?

A. Since June, 1879.

Q. What is your business?

A. I am clerk of the district court of Gunnison county, and also deputy county clerk and recorder.

Q. How long have you been deputy clerk and recorder of Gunnison county?

A. I have been connected with the office since, I think, about August, 1883.

Q. Did you know A. J. Bean in his lifetime?

A. Yes, sir.

Q. Did he ever hold the position of clerk and recorder of Gunnison county?

A. He did.

Q. Do you remember just when?

A. I think he went in in November, 1881, and held the office, I think, until January, 1886.

Q. He was clerk and recorder then, was he, during the month of December, 1882, and the following year?

A. He was.

Q. Were you deputy under him?

A. Yes, sir, I held the deputy appointment under him.

Q. Mr. McCormick, are you familiar with the records of the county of Gunnison—that is, the records in the office of the clerk and recorder?

A. I am.

Q. I will ask you to state whether you know of the existence of any cancelled warrants which purport to have been exchanged for any of the funding bonds of that county?

A. I do.

Q. How long have you known of their being in the custody of the clerk's office?

A. Oh, I think I can safely say since I first went into the office, or some time probably in the year 1883.

Q. Are there any memoranda connected with the warrants which indicate what they are, I don't ask you what the memoranda is, whether there is any memoranda?

A. Yes, sir, there is a memoranda of different batches of warrants that were converted into funding bonds; the memorandum were made, I think, by parties turning in the warrants.

Q. In whose handwriting are these memoranda, if you know?

63 A. That would be hard for me to say; I probably might identify the handwriting of some of them by direct reference to them.

Q. Have you the warrants and memoranda with you?

A. I have.

Q. Have you made from those memoranda and warrants any list or lists showing the bonds of the issue of December 1st, 1892, and the specific warrants which were exchanged for them?

A. I have.

Q. Have you got the lists with you here?

A. Yes, sir, I have.

Q. Will you please turn to the list you have showing the exchange of warrants for series A of the issue of December 1st, 1882, from No. 1 to No. 42?

A. Yes, sir, I have the list.

Mr. JOHNSON: We object to this testimony, for the reason that it is sought to prove by this witness a list he has made from warrants and memoranda that is in the clerk's office, and which we take it would be the better evidence.

The COURT: It is a matter of convenience only; the warrants are all here, and the original memoranda from which these are made; I suppose the idea is to have this memoranda used instead of copying the original warrants.

Mr. THOMAS: That is all, the warrants are very voluminous.

Mr. JOHNSON: Well, if we can have access to the warrants that will do.

The COURT: You can examine them; of course we shall allow this witness to carry them back, as they are part of the records of the county.

Q. Is this statement to which you have turned in answer to my last question one which you have made yourself?

A. Yes, sir.

Q. I now hand you a package consisting of three envelopes, and marked No. 1; I will ask you what it is?

A. Package No. 1 contains warrants turned in by Mr. N. P. Seeley, and for which bonds numbered from 1 to 24, inclusive, one thousand dollars each, numbered 181 to 192, inclusive, $500 each and 201 to 219, inclusive, of $100 each, were issued; also contains a statement, I think, that was turned in by Mr. Seeley.

Q. Whose writing is that which you have referred to in answering the last question, if you know?

A. I would say that it was the writing of Capt. A. J. Bean.

64 Q. Now, will you please produce, if you can, the memorandum which you say was turned in by Mr. Seeley with those warrants?

A. (The witness produces it.)

Q. Have you compared the list which you have produced with the warrants themselves for the purpose of seeing whether they tallied?

A. I have, sir.

Q. With what result?

A. That they are correct with probably—there may have been some little error in the matter of interest or something of that kind, a few cents, but I think that you will find that that package is all correct; I made a memoranda of pencil marks upon the different packages of any errors, and you will find them on the package.

Q. These memoranda refer to the three packages, do they?

A. Yes, sir, these are the memoranda of the warrants turned in by Mr. N. P. Seeley.

Q. What is the total amount of the warrants in this package No. 1?

A. I would have to refer to the memoranda on the package to tell, I could not call it from memory (looks at the memoranda); the warrants cancelled and enclosed in this package amounted to $49,896.08, and there was $49,900 in bonds issued for those war-

rants, and the balance of $3.92 was assumed by Mr. Gill, of Gunnison, the banker there.

Q. That was in exchange for the bonds among others embraced from No. 1 to 42, inclusive, series A?

A. Yes, sir.

Q. Now have you made a computation of the warrants that were exchanged for bonds from No. 63 to 66, inclusive?

A. Yes, sir, I have made a computation of the warrants that were turned in and then I have given the bond issue in which those numbers were included.

Q. Have you made the list from the book yourself?

A. Yes, sir, I have the list. Bond series A, No. 43 to 66, inclusive, being 24 bonds $1,000, and series C, No. 223 and 228.

Q. Have you an envelope containing warrants in exchange for those bonds?

A. I have, sir.

Q. Will you produce it?

A. Yes, sir.

Q. Whose handwriting on the back of that if you know?

A. To the best of my belief, Capt. A. J. Bean's handwriting.

Q. Clerk and recorder?

A. Yes, sir, A. J. Bean.

65 Q. Now produce the warrants, please, that were exchanged for the bonds last mentioned.

(The witness produces them.)

Q. Is there any memorandum accompanying those?

A. There is, sir.

Q. Did you find it with the warrants in the clerk's office?

A. I did, sir.

Q. Do you know who turned the warrants in for the bonds last mentioned?

A. I know from the package that I find them in.

Q. From the indorsement on the package?

A. Yes, sir, they were turned in by Mr. Sam. G. Gill.

Q. Who is Mr. Sam. G. Gill?

A. President of the First National Bank of Gunnison; at that time I think he was connected with the Bank of Gunnison.

Q. This paper, then, which you have last produced, together with the warrants taken from the envelope constitute those which were exchanged for the bonds including 63 to 66?

A. Yes, sir.

Q. Now, have you made an estimate of the bonds which were issued including No. 98, and a list of the warrants which were exchanged for the bonds of which that is one?

A. Yes, sir, I have; yes, sir, I have the list.

Q. What page of your book do you refer to?

A. Page No. 128 in this book.

Q. Whose handwriting do you find upon the back of the envelope containing the warrants last referred to?

A. To the best of my belief that is the writing of Mr. Frank D. Woodhouse.

Q. Who was at that time deputy county clerk and recorder under Mr. Beau?

A. Yes, sir.

Q. Do you know of any memorandum with the warrants exchanged for the last list you called?

A. On the envelope, yes.

Q. Is there any inside of it?

A. Yes, sir.

Q. By whom do they purport to have been turned in?

A. They were turned in, apparently, by Mr. L. Coppinger, who at that time was connected with the First National Bank of Gunnison, and that writing seems to be in Mr. E. P. Sholtz's hand, who was the cashier of that institution.

Q. Now, is it possible, Mr. McCormick, for you to tell what specific warrants entered into any specific bond of the list you mentioned?

66 A. No, sir, not directly; I can tell only the warrants that were issued and that are in each batch of bonds.

Q. As they were issued?

A. Yes, sir.

Q. Is the list which you have made prepared from and a combination of these different warrants and statements you have found in the three packages I have questioned you about?

A. It is, sir, both.

Q. Give the numbers of the pages on your book upon which the other computations are made—that is, those including bonds 1 to 42, and 63 to 66?

A. Bonds 1 to 42, the list of warrants will commence on page 106, and runs to page 115; 106 to 115, inclusive. The bonds from 63 to 66, series A, on page 116 to page 119, inclusive, and bonds 96 to 98——

Q. That you have already given on page 128.

A. 128 and extends to 135.

Q. Now, do the lists give the number and date and amount of the different warrants going to make up these separate batches of bonds?

A. It does, sir, together with the interest on each of the warrants that was turned in.

Q. Interest collected separately?

A. Yes, sir, (interest*ed*) collected and then added to the total.

Q. So that the lists which you made are a concise index of the contents and condition of these entries?

A. Yes, sir.

Q. When did you make that list, Mr. McCormick?

A. I could not give the exact date, but I think it was in the spring of 1886.

Q. A long time prior to the commencement of this litigation?

A. Yes, sir, so far as I know of. It was in the spring of 1886, I am quite sure.

Q. For whose use and under whose direction did you make the lists?

A. I think at the instigation of the board of county commissioners of Gunnison county.

Q. Does the book belong to the files or records of the county clerk's office?

A. Well, I think so; the commissioners passed an order at that time, according to my recollection, which I think I have here.

Q. That is in the fore part of the book?

A. Yes, sir, and I think it belongs to the records of the county clerk's office, so considered.

67 Q. Mr. McCormick, I will ask you whether the financial statements of Gunnison county for the six months ending December 30th, 1881, June 30th, 1882, and December 30th, 1882, which were introduced in evidence this morning, are recorded in any book of the Gunnison county records?

A. They are, sir.

Q. Are these certified copies taken from the book of record?

A. I should judge they were, sir. I don't know whether I made those copies or not. I didn't make these myself, but I know they have a book for that purpose, and this was in the county clerk's handwriting, the certificate is.

Mr. JOHNSON: We object to this line of testimony to prove the nature of that book. The statute requires these semi-annual statements, after they have been published, as I understand the law, to be recorded in a book kept for that purpose only; now whether a book would be in compliance with that statute could only be determined by some label or title upon it, and that can be best determined by an inspection, and I see no reason why that book should not be brought here, as that was one of the issues in the case, as to whether any such book had been kept, so that the court could at least see it and determine as to whether that book was such a book as is contemplated by the statute.

The COURT: I think the witness may testify; if you claim that the testimony is not sufficient to show a compliance with the statute you can do so.

To which ruling of the court counsel for complainants then and there duly excepted.

Q. The question is, whether the statements were kept in a book in the county clerk's office kept for that purpose?

A. Yes, sir; they are.

Q. Mr. McCormick, do these statements show by themselves the increase of the amount of the indebtedness between one statement and the other?

A. I think so, sir.

Q. And can be ascertained from the body of the certificate?

A. (No answer heard.)

Q. Can you state whether these files have been continuously in the recorder's office from the first time you knew of them in the recorder's office?

A. Yes, sir; that is, to the best of my knowledge. I had free

access to them all that time, and I don't believe they have been molested except by myself.

68 Mr. THOMAS: We desire now, if the court please, to offer these statements and warrants, and for the purpose of facilitating matters we offer the list which has been prepared along with them, which is so much more convenient and to which reference is so much more easily made; he has testified that they are correct, and we prefer to offer the lists rather than the accumulated mass of warrants, etc., if it is acceptable to the plaintiffs.

Mr. JOHNSON: We object to the introduction of these warrants and lists, upon the ground that they do not distinguish in any manner as to what particular warrants Mr. Stanley exchanged for his first five bonds; and, second, that under the recitals in these bonds, and particularly as to any bonds purchased by Mr. Stanley for cash and in exchange for warrants, he is not required to take notice of the nature and character of the warrants, the dates or amounts or as to whether they were valid or invalid. Third, that the warrants, being merged in the bonds, if the bonds under their recital do not carry notice to a purchaser of the invalidity of any of this date entered into the funding, as represented by the funding bonds, then Mr. Stanley would not be impressed with notice of the invalidity of any particular warrant that may have been funded. And generally, that there is no statute or record that requires the purchaser of a bond to take notice of the warrants that have been funded; indeed, the law contemplates that these warrants when taken in exchange for funding bonds shall be destroyed.

The COURT: We shall have to receive them, but we will retain them with the book; that is, the lists of the warrants, we will not keep these warrants, because they are a part of the records of the county.

To which ruling of the court counsel for complainants then and there duly excepted.

Mr. THOMAS: We can make copies of whatever is necessary, and have them go into the record.

Copy of said list is hereto attached, marked Ex. K.

The COURT: I think for all the purpose of this litigation, the list, if it be accurate, is sufficient, without being required to keep the warrants themselves or the copies of them for this record.

Q. Mr. McCormick, please state whether the book of statements which is referred to in the certificates, and these certified copies of the financial statements of Gunnison county, are correct?

A. They are.

69 Q. Do you know anything about an issue of bonds of Gunnison county for court-house purposes?

A. Yes, sir, there was an issue made and put on record.

Q. Can you give the date approximately?

A. I think they were issued in about 1881, I am not sure.

Q. Well, take this book, I will ask you if you made a list of those bonds also?

A. Yes, sir.

Q. Is that a memorandum made by yourself of the list?
A. Yes, sir.
Q. Well, refreshing your recollection from that, give the date of the issue?
A. The date of the issue was October 15th, 1881.
Q. And what was the amount?
A. $20,000.

Mr. JOHNSON: We object to this testimony, and move the court to strike it out, on the ground that those bonds issued to build public buildings and which, as the pleadings show, should come under the law only of bonds issued upon a vote of the people under a separate and distinct clause of the constitution, and that therefore those bonds whether valid or invalid would not be taken into consideration in determining the validity of warrants that the board issues without such vote of the people.

Mr. THOMAS: The purpose in offering it is for the purpose of showing the indebtedness of the county at the time these bonds were issued, and also to show that this issue of bonds took place after the assessed valuation had reached one million and upwards, according to the records and valuations of 1881, certainly a part of the indebtedness of the county.

The COURT: If these were issued for building the court-house, they are not to be taken as a part of the indebtedness in respect to the bonds in suit; I think the objection is well taken.

Mr. THOMAS: We make the offer, if the court please, to show that; the witness has already testified and this is a motion to strike out.

The COURT: I think it ought to be excluded.

To which ruling counsel for defendant then and there excepted.

70 Cross-examination of Mr. MCCORMICK.

By Mr. RICHARDSON:

Q. Mr. McCormick, have you been continuously connected with the county clerk's and recorder's office since 1883?

A. I could not say positively whether I have been holding a deputy appointment all that time or not, I am sure a greater part of the time, and I have had keys of the office and the basement vaults, and had free access at all hours to the office ever since I was there.

Q. Do you know of the condition of these warrants here in suit since December 1st, 1882, or at whatever time they were taken in by the county treasurer of that county?

A. No, not all that time, sir, I have not so testified.

Q. When did you first notice them in the county clerk and recorder's office?

A. I will explain that: These warrants have been kept in an iron box that was purchased, I suppose for that purpose, and I knew of their existence; and then I have examined the warrants personally myself and I do not believe that any other person examined them until the time I made this list, which was about 1886.

Q. Then, from the time they were taken in by the county treasrer until 1886 when you examined them, you have no knowledge f them other than that you supposed they were in this iron box?
A. I knew these packages were in this box.
Q. Now, is it not a fact that out of each of the packages of warants to which you have testified here as belonging to separate parts f this issue of bonds, that the first package of warrants represents bout forty-nine thousand dollars of the bonds?
A. That is a fact.
Q. And is it not a fact that you do not know and cannot testify s to what portion of that bunch of warrants were issued in exchange or bonds numbered 9 to 13, inclusive?
A. I could not state what warrants went in with those special onds.
Q. You simply state that the total amount of that bunch of warants amounts to $49,000 approximately?
A. Yes, sir.
Q. And that the total bunch was exchanged for bonds equal in mount to the bunch of warrants?
A. That is correct.
Q. So that you do not know what specific warrant applies to any pecific bond?
A. No, sir.
Q. You have examined these warrants?
A. I have.
Q. The warrants are of different dates and of different ears, are they not?
A. Yes, sir.
Q. And for what period of time; from the formation of the ounty in 1877 clear down to the date of the vote which the people ad on bonds, are they not?
A. No, sir; I think not.
Q. Well, what is the date of the last warrant that was embraced n the date of this funding issue?
A. I can give you the date by referring to my memoranda.
Q. You are at liberty to do so.
A. That is, in that issue of $49,000?
Q. Yes.
A. The warrant of the earliest date included in that issue of onds was January 6th, 1881.
Q. And the warrant of the latest date?
A. I think it was September 1, 1882.
Q. You have then (*then*) in that list, in their numerical order, or n the date of their registry, or the date of their issuance, which?
A. The date of their issuance.
Q. So that the warrants that are covered by this issue commenced n 1881, did they, in September, 1881?
A. No, sir; January 6th, 1881.
Q. January 6th, 1881, and ran down to September, 1882?
A. Yes, sir.
Q. Now, is there any way for you to tell which of these numbers

of warrants which you have gotten in numerical order were presented to the county treasurer at the time they were exchanged for bonds?

A. Which ones?

Q. Yes.

A. No, sir; except the lists.

Q. As a matter of fact they were all presented in a bunch, were they not, and the tabulated lists along with them?

A. I presume they occurred in the order in which that list run.

Q. In relation to bonds 63 to 66 does precisely the same condition obtain as to the warrants in that list?

A. Yes, sir.

Q. What was the date of the first issuance of warrants in that list and the date of the last issuance, if you know?

A. In that list the earliest issue was July 1st, 1879, and the latest date was September 15th, 1882.

Q. Now, from July 1st, 1879, to September 15th, 1882, embraced in the bunch of warrants which you have exhibited here,
72 there were a great many more bonds than bonds 63 to 66 issued in exchange for those warrants, were there not?

A. Yes, sir.

Q How many other bonds were issued in exchange for that bunch of warrants, besides these?

A. The total issue in that bunch is 24,600.

Q. (*There*) bonds from 63 to 66 were $1,000 bonds, were they?

A. Yes, sir.

Q. So that there was $21,000 represented in that bunch of warrants over and above the bonds the coupons of which are here in controversy?

A. A little over twenty.

Q. Well, practically, between twenty and twenty-one. And are you able to state which of the warrants are redeemed or exchanged, which at that time were exchanged for these particular bonds 63 to 66 inclusive?

A. I am not.

Q. What do you say with reference to bond No. 98; you said something in your direct examination about bond 96, but I don't understand that 96 is in this suit?

A. 98 is in the same condition as this.

Q. How many bonds were issued at the time of the exchange of the warrants, including this bond 98?

A. 23,100.

Q. So that there were at least $22,000 of indebtedness represented by that bunch of warrants that bonds were exchanged for, over and above this bond 98, was there?

A. Yes, sir.

Q. And you are not able to tell, are you, as to what warrants in that bunch applied to this bond 98?

A. I am not.

Q. What was the date of the warrants exchanged in that bunch, the earliest warrant and the latest warrant?

A. The earliest warrant that appears from my list?
Q. I want to know what the date of the earliest warrant was; if you can, refresh your memory by looking at the list?
A. There were three warrants issued in October, 1880, the month does not appear in the warrants, October, 1880.
Q. They were the earliest warrants?
A. Yes, sir.
Q. And how late do they run down to?
A. September 1, 1882.
Q. Now, generally speaking, as to all three of these bunches of warrants, they covered, during those intermediate periods of
73 time, several issues of warrants, don't they; that is, the board met at different dates and issued a greater or less amount of warrants at each sitting?
A. It would appear so from the record.
Q. And they were the warrants which were embraced in this or these three exchanges?
A. Yes, sir.
Q. You say that as to the first exchange Mr. Seeley was the man who presented the warrants and took the bonds in exchange?
A. I say that it appears so from the record, and the other statement that accompanies the warrants.
Q. All that you know about it then is simply that knowledge you derive from the statement which accompanies the warrants in Bean's handwriting?
A. No; I think the statement is not in Bean's handwriting, it is probably Seeley's handwriting.
Q. Are you acquainted with Mr. Seeley's handwriting?
A. No; I am not.
Q. Then as to that matter you are simply using your best judgment?
A. I say, probably; I don't know.
Q. Now, you say that two different banks in Gunnison presented warrants for exchange?
A. So it appears on the statement.
Q. You are guessing about that in the same way.
A. I know it by the writing on the envelope, and the statements.
Q. Your sole knowledge is derived from what appears on the envelopes themselves, and the statements accompanying?
A. Yes, sir; from the statements accompanying.
Q. You have been examined with reference to some certified copies of financial statements; you are the present county clerk and recorder?
A. No, sir; I am deputy.
Q. Present deputy?
A. Yes, sir.
Q. You have charge of the book from which the statements were compiled?
A. No; I cannot say that I had charge of it, sir.
Q. You know where that book is?
A. I probably could find it very readily if I was in the office.

Q. You have seen the book, have you?

A. Yes, sir.

Q. Are you able to say positively that that book is a book which relates exclusively to the registration of these semi-annual statements?

74 A. I think I can, sir.

Q. What kind of a book is it?

A. My recollection is sir, it is something of a journal or ledger form, journal form I think.

Q. Nothing else in that book but the records of the semi-annual statements.

A. I don't believe, to the best of my recollection there is not; there might possibly be, but I don't believe there is.

Q. You can't testify positively?

A. I wouldn't testify surely, that is the best of my belief.

Q. Do you know how long that record has been kept?

A. No, sir.

Q. You don't know the date of the first entry in it?

A. I cannot say; but I think it is prior to these statements, a year.

Q. You think about a year prior to the first of these statements?

A. I could not identify the time. I think it is, probably. I might state further that it is not the same book, maybe, that we now keep the statements in.

Q. What serves to distinguish this book from any other books in the county clerk and recorder's office?

A. I could not tell you, sir, only it is a record they keep for that purpose.

Q. Whereabouts is it kept during business hours?

A. In the vault; all the books are in the vaults except those that are in actual use.

Q. This is not a book, then, that is kept out on exhibition with the other books?

A. There isn't any books kept on exhibition, sir.

Q. Well, I mean out where the general public can get at them?

A. No, sir; the whole books of the office are kept in the vaults at all times, and it is only such books as persons come in and inquire for that we take out of the vaults.

Q. The general books of record you do not take out during the day?

A. No, sir; unless the book is called for; except the general indexes and the reception book.

Q. Is there anything on the outside of this book to designate what the contents are?

A. I would not say sir, I don't remember.

Q. You don't remember, you simply know there is such a book and that it contains these matters, possibly among others?

A. No; I think sir you will find the statements in the book alone; that is my recollection, except, as I say, I would not

75 swear positively to that effect, but that is to the best of my knowledge and belief.

Whereupon counsel for plaintiffs moved to strike out all the evidence of this witness with reference to the book which is supposed to record the semi-annual statements of the indebtedness; first, because it is not the best evidence; the book itself being the best evidence, and the only thing which will serve to comply with the statute which calls it into existence; and second, because this witness is not sufficiently certain as to the book to indicate that it is a book kept for that purpose only.

Which motion was by the court denied; to which ruling of the court, counsel for complainants then and there duly excepted.

Mr. THOMAS: If the court please, my attention has been called to the fact that section 6 of article XI of the constitution only excludes from the consideration of gross debts those which were contracted prior to the adoption of the constitution, and that would seem to include in the total limitation indebtedness of the county, that the county can give bonds for such purposes as court-houses, bridges, toll-roads, etc., and that being the case, I would like to renew my offer to show that bonds to the extent of twenty thousand dollars were issued in October 1881 by this county, for the purpose of building a court-house.

The COURT: But 1881 was after the adoption of the constitution.

Mr. THOMAS: The constitution was adopted in 1876, your honor; I believe this county was not created until after we became a State.

The COURT: Will you show me the constitutional provision?

Mr. THOMAS: Section 6 says that the aggregate amount of the indebtedness of the county exclusive of debts contracted before the adoption of the constitution, shall not exceed—of course this bonded debt is a part of the debt of the county.

The COURT: What section is it that provides for debts for building court-houses and public buildings?

Mr. THOMAS: That section was repealed, and a substitute adopted for it in 1883, as I remember.

Mr. RICHARDSON: Your honor asks for the section covering the creation of debt for the building of roads and bridges?

76 The COURT: Yes, sir, and public buildings; there is a section of the constitution about that, is there not?

Mr. THOMAS: That is the first portion of the same section.

The COURT: I understand this to mean that the section does not apply to debts contracted for public buildings.

Mr. THOMAS: We renew the offer as made, and save an exception.

Mr. RICHARDSON: For the purpose of making our record upon that, your honor, we desire also to ask one question, with a view to having your honor's ruling brought into question elsewhere; and that is this question, if your honor permit it; as to whether or not the bonds about which the witness has been interrogated were not issued pursuant to a vote of the people, twenty thousand of bonds.

Mr. THOMAS: We object to the answer, unless we can go into it.

The COURT: We will not allow that.

Mr. RICHARDSON: We save an exception.

Mr. T. J. MALONEY, being recalled by the defendants, testified as follows:

Direct examination.

By Mr. THOMAS:

Q. Mr. Maloney, I hand you a memorandum covering several sheets of paper, and ask you to state if you recognize it as being the memorandum used by Mr. Seeley at the time he applied to you to exchange certain warrants for the bonds of Gunnison county about which you testified this morning?

A. This is all one memorandum?

Q. Yes, sir, all one memorandum.

Mr. JOHNSON: We object to that memorandum on the ground that a purchaser of bonds is not required to take any notice of such a memorandum.

Which objection was by the court overruled, to which ruling of the court counsel for complainants then and there duly excepted.

A. I will have to go over it a little more carefully to tell whether it is all part of the same memorandum or not; yes, I recollect it.

77 Q. Are there any marks or notations of your own upon that?

A. There are.

Q. Can you say that is the memorandum which Mr. Seeley used upon that occasion?

A. If I had time to make the footings I could tell.

Q. Well, to the best of your knowledge and belief?

A. It certainly is, yes; I am sure this is the memorandum.

Mr. THOMAS: We desire to offer this memorandum in connection with the testimony of the witness.

Mr. RICHARDSON: We object to its materiality and competency.

Which objection was by the court overruled; to which ruling of the court counsel for complainants then and there duly excepted.

Whereupon said memorandum was received in evidence and marked Exhibit L, and the same is hereto attached and made a part of this record.

Cross-examination of Mr. Maloney waived.

Mr. THOMAS: I do not know whether it is necessary, your honor, to offer the act creating Gunnison county, approved on the 9th of March, 1877, and found in the General Laws for 1877 on pages 213 to 216.

Mr. JOHNSON: We object on the ground that it is not an act that a purchaser of bonds would be required to take notice of.

No ruling by the court upon the objection.

Whereupon the further proceedings herein were continued until the 20th day of May, A. D. 1896, at 10 o'clock a. m.

Wednesday, May 20th, at 10 a. m, the further trial of this cause was continued as follows:

Counsel for complainants moved to exclude (*the*) these semi-annual statements on the ground that it has not been shown that they were ever published as required by law.

The COURT: By published, you mean put in the newspaper?

Mr. JOHNSON: The statute, which I presume your honor is familiar with, requires that the board of county commissioners shall make this semi-annual statement and publish it in a newspaper if one be published in the county, and, if not, that it shall be posted
78 up at three public places in the county, one being on the court-house door; and in addition to such publication it shall be recorded in a book kept for that purpose only; we contend that a purchaser would be entitled to take a county paper of the proper date, examine it and ascertain that no such semi-annual statement had been published, and if he knew of this statute, upon ascertaining that it had not been published, and finally ascertaining that it had not been posted, he would have a right to assume that it was not recorded; and indeed the wording of the statute would seem to contemplate a record that had been first published and then made a record afterwards.

Mr. THOMAS: It is true, as counsel states, that we have made no attempt to show the publication of these statements; we were able to obtain some evidence of an unsatisfactory character upon that subject, but nothing that was of sufficient importance and weight to justify us in attempting to offer it, as the publication of newspapers at that time was not in a very satisfactory condition in that county; the papers would be published for a few months and then disappear, or would be merged into some other paper, and it is impossible for us to find any of the old files of any of the papers, and they do not seem to have been preserved by the clerk and recorder, and we take it that under the statute it is the record of the statement that is notice, and not the publications in the papers that is notice to the purchaser.

The COURT: I think we will have to allow this evidence to stand. I do not regard the publication as of any weight.

To which ruling of the court counsel for plaintiffs then and there duly excepted.

Thereupon counsel for defendant made a formal motion under the evidence as offered on both sides, that the court instruct the jury to return a verdict for the defendant.

Whereupon the court instructed the jury as follows:

"Section 6 of article XI of the constitution of this State limits the amount of indebtedness which may be incurred by a county, and provides, after mentioning the rate of valuation or assessment which may not be exceeded, in the last clause that the aggregate amount of debt so contracted shall not at any time exceed twice the rate of the valuation herein mentioned. Such limitations are of recent growth in the history of constitutional law in this (count-y). In the colonial States, and for the first fifty years certainly, of the Government of the United States, there was no tendency on the part of

county officials or of city governments, to recklessness and extravagance, and therefore such matters were not at all considered.

79 At first when there began to be a disposition to burden the people with debts in an oppressive way the legislatures sought to remedy the difficulty by putting some conditions in the way of the exercise of the power creating indebtedness. They provided that there should be no indebtedness except a certain amount, or perhaps that there should be a vote of the people to authorize the indebtedness and some other restrictions and limitations, usually giving the power to the county or the city government to determine whether these conditions were observed. The county governments and the city governments paid but little attention to such restrictions, and when controversies arose in respect to any indebtedness which had been incurred without regard to the limitations the courts held that if the county or the city was authorized by law to determine when the conditions were fulfilled, the county or city, as the case might be, would be bound to the payment of the obligation. The fact that the conditions had been fulfilled were often recited in the obligations themselves, and it was then held by the courts that if there was a recital in the bond or other security issued, the county or city would be estopped to deny that the conditions had been fulfilled; so that it was found that the restraints which were put upon municipal corporations were not effective; they went on in the same way as they had always done, to create the indebtedness without reference to the power which they possessed. Then resort was had more recently to constitutional provisions in limitation of the powers of the county and other local governments. These were often found to be not sufficiently rigid; they could be avoided in some way; and so the stringency was increased. The framers of the constitution of this State were fully advised of this condition of things when they came to the making of our constitution, and they resolved to make and did make a very strong provision upon that subject. They had abundant reason to proceed in that way. In some of the counties, under the territorial government, county warrants had been issued in payment of demands against the county upon some assumed market rate at which they would sell; that is to say, if the county contracted for doing something at a certain price and the warrants were thought to be worth seventy-five cents in the dollar in the market, they gave an excess of twenty-five per cent. in the warrants issued; and so, when the warrants were only worth fifty cents in the dollar they felt authorized to issue double the amount of the face value of the warrants in payment for the services rendered. Obviously such a condition of things demanded a remedy, and the remedy was sought and applied in this

80 provision of the constitution to which I have called your attention. Soon after the Territory became a State and this provision of the constitution came into force, controversies arose as to its meaning. There was considerable discussion in the courts as to whether, if the county should recite in any obligation which it issued that it had complied with the terms of the constitution and with the law of the State, and the indebtedness which had been

created, or which was recognized in the obligation issued, was no more than was authorized under the constitution, whether the county would be estopped by such a statement as that in the bond or other obligation that might be issued; and there were conflicting decisions in the courts upon this subject; some of the courts being inclined to follow the old rule which had been established in the early history of the subject to the effect that if the municipal body recited the fulfillment of the conditions imposed upon it, it was thereby estopped from denying the fact; other courts perceiving that if there was an absence of power, if the county had no power to create an indebtedness its declaration that it had such power could not be effective as a grant of power, and could not confer a power which did not exist; that there could be no rule of estoppel in any such case. And so we have it now settled that whatever the form of obligation which may be issued by a county, whatever may be declared in that obligation as to the conditions under which it is issued, the question whether the county had authority under the constitution to issue such obligation is still open to investigation and consideration.

The act of the State under which the bonds in question in this suit were issued was passed in the year 1881. It is entitled "An act to enable the several counties of the State to fund their floating indebtedness." In the act itself, in the title of the act and in the body of the act, the circumstance that the bonds issued pursuant to its terms, are in settlement of pre-existing indebtedness, is everywhere manifest. So that there is no room in any controversy which may arise in respect to bonds issued under this act, for any contention that the bonds were issued to be sold for money in the market. They were to be issued only for funding purposes; that is to say, to get the indebtedness existing upon the records of the county into one sum and to issue securities therefor. In the first section of the act, and towards the end of the section, it is provided that the whole amount of bonds issued under the act shall not exceed the sum of the county indebtedness at the date of the first publication of the aforementioned notice, and the amount shall be determined by the county commissioners and a certificate made of the same, and made
81 a part of the records of the county, that is to say, in proceeding under the act, the county commissioners in the first place were to ascertain the amount of the existing indebtedness of the county and to make a certificate of it and record the fact. Thus they were required by the act itself to put upon record the amount of the indebtedness. There was an earlier act passed in the year 1877, four years earlier, which provided in its thirtieth section that the county commissioners of each county should make semi-annual statements and publish the same in a newspaper, which statements shall show the amount of debt owing by the county, in what the debt consists, what payments, if any, have been made upon the same, the rate of interest, and so on. Also a detailed account of the receipts and expenditures of the county for the preceding months and so on. And this statement is to be recorded in a book to be kept by the clerk of the board for that purpose only. So that there

were at the time of these transactions two acts requiring a record to be made of the indebtedness of the county; the act of 1877, requiring that this record should be made twice in each year, and the act of 1881, requiring that it should be made as a preliminary to the issue of bonds under the act. So that there is no room for controversy that there must be in the records of the county a statement and account of the indebtedness of the county; in any controversy this amount is one of the facts to be ascertained; that is to say, there must be if a purchaser of bonds issued under the act of 1881 is to be charged with notice of facts which are to be ascertained in order to determine whether the constitutional provision has been complied with, a record of the indebtedness of the county. The other fact which is to be ascertained in order that it may be known whether the county had exceeded its authority under the constitution in creating the indebtedness, is the assessed valuation of the property of the county. That also is required to be made a matter of record by the laws of the State. I cannot point you to the particular section of the act which requires that, but there is no controversy between counsel upon that subject; it is shown to you in evidence that The County of Gunnison, the defendant in this suit, had an assessed valuation of property in the year 1880 of $596,000 and a little more; in the year 1881 it had a valuation of one million, two hundred and sixty thousand and something more, in the year 1882 a valuation of two million three hundred and forty thousand and some hundreds. So that we are able to say that under section 6 of the constitution of the State the county of Gunnison came within the limitation of the section in the year 1881.

82 I have not called your attention before to the fact that the constitutional provision is that counties having a valuation of less than one million of dollars shall not be subject to its provisions; so that in the year 1880 there was no limitation to the county of Gunnison in respect to its indebtedness; but there was such limitation in 1881 and 1882 at the time the bonds in suit were issued. In the discussion of these questions before the court counsel seemed disposed to contend that under the constitutional provision there might be an indebtedness created in each year to the extent specified in the constitution, whether there was any pre-existing indebtedness or not, and that the indebtedness incurred prior to the year 1881 should not be counted as part of the indebtedness existing in the year 1882, at the time these bonds were issued. There is no ground for such position. The constitution does not at all mean that the county may in each year incur an indebtedness of six mills in the dollar, or of twelve mills in the dollar of the valuation of its property; but that the indebtedness shall at no time exceed that; that is to say, whether the indebtedness be created in one way or another, it stands as an aggregate at the time of issuing any securities, and if at that time it exceeds the constitutional limit, then there is no power to create any indebtedness whatever. But if that were not true, and if the rule be as counsel contends, the semi-annual statements put in evidence before you show that the increase in the years 1881 and 1882, was greatly in excess of the constitutional

limit; that is to say, the Board of County Commissioners of Gunnison County were utterly oblivious of any constitutional provision; it may be doubtful whether they had ever heard of such a thing; it may be even doubtful whether they knew that there was a constitution of the State; perhaps they regarded themselves as the supreme paramount authority of the land. But, however that may be, they were going on, as appears from the statements, without any reference whatever to the constitutional provision, and the growth of indebtedness in each period of six months was far in excess of the limit imposed by the constitution; so that it matters not whether we take one view of this question or another; if we say that they have the right in each year to go to the limit of the constitution regardless of what the circumstances were, or that they have not such right, the result is the same.

A question has been made as to whether the bonds issued in this case—I believe there were about one hundred and seventy-five thousand dollars of them—that is the amount of indebtedness which the commissioners found to be existing on the first of September,
83 1892, when they made up their accounts for issuing the bonds—a question has been made whether the bonds may not be valid in some part; that is, as to the part for which the county was really bound upon the warrants, because certainly there were some of the warrants valid, and the remainder to be void under the constitution. Counsel stated that there was in the year 1882 property in the county to incur an indebtedness of twenty-eight thousand dollars, or something like that, referring to the constitutional provision and the assessed valuation of the property within the county. And so there was some disposition upon the part of counsel to contend that there was at least this amount of bonds which can be recognized as valid and subsisting obligations of the county, even if the remainder shall be rejected; some of these bonds in suit are of numbers which might fall below the sum; as I believe, there were nine to thirteen which would be below twenty-eight thousand, and then there were sixty-five to sixty-nine, or some number in the sixties, which would be far beyond it, and ninety-eight, which is still farther along in the dim distance. But we cannot go upon any such principle as that. The rule established in the courts is that if, of a series of obligations issued there be any of them void, the court cannot distinguish between them. As it appears affirmatively from what is shown here that a great part of the one hundred and seventy-four thousand dollars which the county commissioners found to be outstanding warrants on the first of September, 1882, were not valid under the constitution of the State, we are unable to pick out any certain number of those warrants and say they did not fall within the prohibition of the constitution.

Some question has been made also whether the plaintiff here may be regarded as an innocent purchaser of the bonds for value. If it were necessary to ascertain that fact it would perhaps be a matter of some difficulty. Mr. Standley, who first came to the possession of the bonds as a holder for value held warrants which were funded

in the bonds to the extent of one-half of them, five thousand dollars. I am inclined to think that he would not be an innocent purchaser in respect to the bonds which he obtained for those warrants; he would stand in the same position in regard to the bonds which he held in respect to the warrants which he gave in exchange for the bonds. He purchased the other five thousand dollars from Rollins and Young, and Rollins and Young were pretty familiar with the condition of affairs over there. They got all of the bonds, or nearly all of them, in exchange for warrants which they surrendered. Afterwards the present plaintiff, who is the legal and perhaps natural heir of Rollins and Young, repurchased the bonds.

84 Whether the plaintiff, having first obtained the bonds in exchange for warrants, and afterwards repurchased them from Mr. Standley, could stand as an innocent purchaser, would be a matter of some difficulty if we were required to solve it in this action; but we are not concerned about that matter because the rule applicable to the case is that if the records of the county disclose facts which show that the bonds were invalid under the constitutional provision, an innocent purchaser, and every purchaser, must take notice of those facts; in other words, he is bound to examine the records with a view to inform himself as to the power of the county, before he makes a purchase of the bonds. Not doing so he is held to have purchased them with full knowledge of whatever is disclosed in the records, and in this instance the record of the county abundantly shows the amount of the indebtedness and the assessed valuation of the property of the county.

We come to the conclusion, then gentlemen, as matter of law, that upon the facts fully explained in the evidence the plaintiff is not entitled to recover; therefore you are relieved from determining some questions of fact which it was thought in the beginning it might be necessary to take your opinion of. We shall be compelled to ask you to render a verdict for the defendant.

Whereupon counsel for complainant entered the following objections and exceptions to the instructions to the jury as given by the court:

The court instructed the jury as follows:

"There was considerable discussion in the courts as to whether, if the county should recite in any obligation which it issued that it had complied with the terms of the constitution and with the law of the State, and the indebtedness which had been created or which was recognized in the obligation issued, was no more than was authorized under the constitution, whether the county would be estopped by such a statement as that in the bond or other obligation that might be issued; and there were conflicting decisions in the courts upon this subject; some of the courts being inclined to follow the old rule which had been established in the early history of the subject, to the effect that if the municipal body recited the fulfillment of the conditions imposed upon it, it was thereby estopped from denying the fact; other courts, perceiving that if there was an absence of power, if the county had no power to create an indebted-

ness, its declaration that it had such power could not be effective as a grant of power, and could not confer a power which did not exist; that there could be no rule of estoppel in any such
85 case. And so we have it now settled that whatever the form of obligation which may be issued by a county, whatever may be declared in that obligation as to the conditions under which it is issued, the question whether the county had authority under the constitution to issue such obligation is still open to investigation and consideration."

To which charge the plaintiff objected upon the ground that the recital in a bond to the effect that the same is valid and issued within the constitutional limitation would work an estoppel the same as though such limitation were prescribed by a statutory provision; which objection was by the court overruled, to which ruling plaintiff then and there duly excepted.

The court instructed the jury as follows:

"The act of the State under which the bonds in question in this suit were issued was passed in the year 1881. It is entitled, 'An act to enable the several counties of the State to fund their floating indebtedness.' In the act itself, in the title of the act and in the body of the act, the circumstance that the bonds issued pursuant to its terms are in settlement of pre-existing indebtedness, is everywhere manifest. So that there is no room in any controversy which may arise in respect to bonds issued under this act, for any contention that the bonds were issued to be sold for money in the market. They were to be issued only for funding purposes; that is to say, to get the indebtedness existing upon the records of the county into one sum and to issue securities therefor. In the first section of the act, and towards the end of the section, it is provided that the whole amount of bonds issued under the act shall not exceed the sum of the county indebtedness at the date of the first publication of the aforementioned notice, and the amount shall be determined by the county commissioners and a certificate made of the same, and made a part of the records of the county. That is to say, in proceeding under the act, the county commissioners in the first place were to ascertain the amount of the existing indebtedness of the county and to make a certificate of it and record the fact. Thus they were required by the act itself to put upon record the amount of the indebtedness. There was an earlier act passed in the year 1877, four years earlier, which provided in its thirtieth section that the county commissioners of each county should make semi-annual statements and publish the same in a newspaper, which statements shall show the amount of debt owing by the county, in what the debt consists, what payments, if any, have been made upon the same, the rate of interest, and so on. Also a detailed account of the receipts
86 and expenditures of the county for the preceding months and so on. And this statement is to be recorded in a book to be kept by the clerk of the board for that purpose only. So that there were at the time of these transactions two acts requiring a record to be made of the indebtedness of the county; the act of 1877, requiring that this record should be made twice in each year,

and the act of 1881 requiring that it should be made as a preliminary to the issue of bonds under the act. So that there is no room for controversy that there must be in the records of the county a statement and account of the indebtedness of the county; in any controversy this amount is one of the facts to be ascertained; that is to say, there must be if a purchaser of bonds issued under the act of 1881 is to be charged with notice of facts which are to be ascertained in order to determine whether the constitutional provision has been complied with, a record of the indebtedness of the county."

To which charge the plaintiff objected, upon the grounds:

First. That said charge erroneously assumes and declares that the funding bonds in question were not negotiable securities, or entitled in the hands of *bona fide* purchasers to protection as such.

Second. That the court erroneously assumes and declares that the purchaser of such bonds must know at his peril, as against the recital therein, as to whether the amount of indebtedness stated in the certificate made by the board as a basis of the issuance of said bonds, is or is not valid indebtedness.

Third. That the court erroneously assumes that the purchaser of said bonds must take notice of the semi-annual statement provided for in an act separate and distinct from the act under which the bonds were issued.

Fourth. Because the court erroneously assumes and declares that a purchaser, by an examination of said certificate and semi-annual statement could ascertain that the indebtedness for which said funding bonds were being issued was invalid because in excess of the constitutional limitation.

Which objection the court overruled, and to which ruling the plaintiff then and there duly excepted.

The court further charged the jury as follows:

"I have not called your attention before to the fact that the constitutional provision is that counties having a valuation of less than one million dollars shall not be subject to its provisions; so that in the year 1880 there was no limitation to the county of Gunnison in respect to its indebtedness; but there was such a limitation in 1881 and 1882 at the time the bonds in suit were
87 issued. In the discussion of these questions before the court counsel seemed disposed to contend that under the constitutional provision there might be an indebtedness created in each year to the extent specified in the constitution, whether there was any pre-existing indebtedness or not, and that the indebtedness incurred prior to the year 1881 should not be counted as part of the indebtedness existing in the year 1882, at the time these bonds were issued. There is no ground for such position. The constitution does not at all mean that the county may in each year incur an indebtedness of six mills in the dollar, or of twelve mills in the dollar of the valuation of its property; but that the indebtedness shall at no time exceed that; that is to say, whether the indebtedness be created in one way or another, it stands as an aggregate at the time of issuing any securities, and if at that time it exceeds the constitutional limit, then

here is no power to create any indebtedness whatever. But if that ere not true, and if the rule be as counsel contends, the semi-an- ual statements put in evidence before you show that the increase the years 1881 and 1882 was greatly in excess of the constitu- ional limit."

To which charge the plaintiff objected upon the ground that the ourt erroneously assumes and declares that said funding bonds ould be invalid if the aggregate amount thereof exceeded the con- itutional limitation, irrespective of whether the indebtedness ac- rued prior or subsequent to the assessed valuation of said county eaching the sum of one million dollars.

The court further instructed the jury as follows:

"A question has been made as to whether the bonds issued in this ase—I believe there were about one hundred and seventy-five thou- and dollars of them—that is the amount of indebtedness which the ommissioners found to be existing on the first of September, 1892, hen they made up their accounts for issuing the bonds—a question as been made whether the bonds may not be valid in some part; at is, as to the part for which the county was really bound upon e warrants, because certainly there were some of the warrants alid, and the remainder to be void under the constitution. Counsel ated that there was in the year 1882 property in the county to in- r an indebtedness of twenty-eight thousand dollars, or something ke that, referring to the constitutional provision and the assessed aluation of the property within the county. And so there was me disposition upon the part of counsel to contend that there was least this amount of bonds which can be recognized as valid and subsisting obligations of the county, even if the remainder shall be rejected; some of these bonds in suit are of numbers which might fall below that sum; as I believe, there were ne to thirteen which would be below twenty-eight thousand, and en there were sixty-five to sixty-nine, or some number in the six- s, which would be far beyond it, and ninety-eight, which is still ther along in the dim distance. But we cannot go upon any such inciple as that. The rule established in the courts is, that if, of a ries of obligations issued there may be any of them void, the court nnot distinguish between them."

To which charge the plaintiff objected, upon the ground that the idence in this case shows that said bonds were issued and deliv- ed from time to time in exchange for warrants as they were pre- nted, and therefore cannot be considered as having all been of one d the same issue.

The court further instructed the jury as follows:

"Some question has been made also whether the plaintiff here ay be regarded as an innocent purchaser of the bonds for value. it were necessary to ascertain that fact it would perhaps be a matter some difficulty. Mr. Standley, who first came to the possession the bonds as a holder for value, held warrants which were funded the bonds to the extent of one-half of them, five thousand dollars. am inclined to think that he would not be an innocent purchaser respect to the bonds which he obtained for those warrants; he

would stand in the same position in regard to the bonds as he held in respect to the warrants which he gave in exchange for the bonds. He purchased the other five thousand dollars from Rollins and Young, and Rollins and Young were pretty familiar with the condition of affairs over there. They got all of the bonds, or nearly all of them, in exchange for warrants which they surrendered. Afterwards the present plaintiff, who is the legal and perhaps natural heir of Rollins and Young, repurchased the bonds. Whether the plaintiff, having first obtained the bonds in exchange for warrants, and afterwards repurchased them from Mr. Standley, could now stand as an innocent purchaser would be a matter of some difficulty if we were required to solve it in this action, but we are not concerned about that matter because the rule applicable to the case is that if the records of the county disclose facts which show that the bonds were invalid under the constitutional provision, an innocent purchaser, and every purchaser, must take notice of those facts—in other words, he is bound to examine the records with a view to inform himself as to the power of the county, before he makes a purchase of the bonds. Not doing so he is held to have purchased them with full knowledge of whatever is disclosed in the records, and in this
89 instance the record of the county abundantly shows the amount of the indebtedness and the assessed valuation of the property of the county."

To which charge plaintiff objected upon the grounds:

First. That the plaintiff in this case is shown to be a *bona fide* purchaser for the reason that it holds under a *bona fide* purchaser.

Second. That Standley, having parted with his warrants in exchange for said bonds, which warrants can no longer be traced or identified, he must be considered as holding the bonds received therefor upon a valuable consideration.

Third. That the evidence shows that the other five bonds were purchased by Standley for cash, without any notice or knowledge of any fact affecting their validity.

Fourth. That the court erroneously declares that the records, which said purchaser should have examined, show the invalidity of said bonds.

The court further instructed the jury as follows:

"We come to the conclusion, then, gentlemen, as a matter of law, that upon the facts fully explained in the evidence the plaintiff is not entitled to recover; therefore you are relieved from determining some questions of fact which it was thought in the beginning it might be necessary to take your opinion of. We shall be compelled to ask you to render a verdict for the defendant."

To which charge and to the ruling of the court requiring the jury to find a verdict for the defendant, plaintiff then and there duly excepted.

Whereupon the court entered judgment for the defendant, and to which judgment the plaintiff then and there duly excepted.

(*Copy of Exhibit A.*)

UNITED STATES OF AMERICA.

No. 1. (Series A.) $1,000.

County of Gunnison,
State of Colorado (Nil Sine Numine) Funding Bond.

The County of Gunnison, in the State of Colorado, acknowledges itself indebted, and promises to pay to N. P. Seeley, or bearer, one thousand dollars, lawful money of the United States, for value received, redeemable at the pleasure of said county after ten years, and absolutely due and payable twenty years from the date
90 hereof, at the office of the treasurer of said county in the city of Gunnison, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the first day of March and the first day of September in each year, at the office of the county treasurer aforesaid, or at the Chase national bank, in the city of New York, at the option of the holder, upon the presentation and surrender of the annexed coupons as they severally become due.

This bond is issued by the Board of County Commissioners of Gunnison County, in exchange at par for valid floating indebtedness of the said county, outstanding prior to September 2nd, 1882, under and by virtue of and in full conformity with the provisions of an act of the General Assembly of the State of Colorado entitled "An act to enable the several counties of the State to fund their floating indebtedness," approved February 21st, 1881; and it is hereby certified that all the requirements of the law have been fully complied with by the proper officers in the issuing of the bond. It is further certified that the total amount of this issue does not exceed the limit prescribed by the constitution of the State of Colorado, and that this issue of bonds has been authorized by a vote of a majority of the duly qualified electors of the said county of Gunnison, voting on the question at a general election duly held in said county on the seventh day of November, A. D. 1882.

Countersigned:
T. J. MALONEY,
County Treasurer.

The bonds of this issue are comprised in three series, designated "A," "B" and "C," respectively, the bonds of series "A" being for the sum of one thousand dollars each, those of series "B" for the sum of five hundred dollars each, and those of series "C" for the sum of one hundred dollars each. This bond is one of series "A."

The faith and credit of the county of Gunnison are hereby pledged for the punctual payment of the principal and interest of this bond.

In testimony whereof, the Board of County Commissioners of said Gunnison County, have caused this bond to be signed by their chairman, countersigned by the county treasurer, and attested by the county clerk, under the seal of the county, this first day of December, A. D. 1882.

E. C. TEACHOUT,
Chairman Board of County Commissioners.

Attest: A. J. BEAN,
County Clerk.

91

(*Copy of Exhibit A*—Continued.)

$20. $20.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer twenty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of December, 1902, being three months' interest on funding bond.

T. J. MALONEY,
No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1900, being six months' interest on funding bond.

T. J. MALONEY,
No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1897, being six months' interest on funding bond.

T. J. MALONEY,
No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1894, being six months' interest on funding bond.

T. J. MALONEY,
No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1902, being six months' interest on funding bond.

T. J. MALONEY,
No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1899, being six months' interest on funding bond.

T. J. MALONEY,
No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1896, being six months' interest on funding bond.

T. J. MALONEY,
No. 1 (series A). *County Treasurer.*

92 (*Copy of Exhibit A*—Continued.)

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1902, being six months' interest on funding bond.

T. J. MALONEY,

No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1899, being six months' interest on funding bond.

T. J. MALONEY,

No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1896, being six months' interest on funding bond.

T. J. MALONEY,

No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1901, being six months' interest on funding bond.

T. J. MALONEY,

No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1901, being six months' interest on funding bond.

T. J. MALONEY,

No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1898, being six months' interest on funding bond.

T. J. MALONEY,

No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1895, being six months' interest on funding bond.

T. J. MALONEY,

No. 1 (series A). *County Treasurer.*

(*Copy of Exhibit A*—Continued.)

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1901, being six months' interest on funding bond.

T. J. MALONEY,

No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1900, being six months' interest on funding bond.

T. J. MALONEY,

No. 1 (series A). *County Treasurer.*

93

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1898, being six months' interest on funding bond.

T. J. MALONEY,

No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1897, being six months' interest on funding bond.

T. J. MALONEY,

No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1895, being six months' interest on funding bond.

T. J. MALONEY,

No. 1 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the State of Colorado, or at the Chase national bank, in the city of New York, on the first day of September, 1894, being six months' interest on funding bond.

T. J. MALONEY,

No. 1 (series A). *County Treasurer.*

Said Exhibit A having engraven upon the back thereof the said act approved February 21st, 1881; also the following:

No. 1.

Series A.

$1,000.

Gunnison County,

Colorado,

Funding bond.

Interest, 8 per cent. per annum, payable March 1 and September 1, at the Chase national bank, New York, or at Gunnison, Colorado.

Bonds redeemable after December 1, 1892, and due December 1, 1902.

94 *Auditor's Certificate.*

I, Joseph A. Davis, auditor of the State of Colorado, do hereby certify that this bond has been duly registered in my office, as required by the provisions of the act under which the same is issued.

In testimony whereof I have hereunto set my hand and official seal, at Denver, on this nineteenth day of December, 1882.

(Signed) JOSEPH A. DAVIS,
Auditor of the State of Colorado,
By W. D. PRICE, *Deputy.*

(COPY OF EXHIBIT B.)

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1886, being six months' interest on funding bond.

T. J. MALONEY,
No. 9 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1887, being six months' interest on funding bond.

T. J. MALONEY,
No. 9 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of *New York.*

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1887, being six months' interest on funding bond.

T. J. MALONEY,
No. 9 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1888, being six months' interest on funding bond.

T. J. MALONEY,
No. 9 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1888, being six months' interest on funding bond.

T. J. MALONEY,
No. 9 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1889, being six months' interest on funding bond.

T. J. MALONEY,
No. 9 (series A). *County Treasurer.*

95

(*Copy of Exhibit B*—Continued.)

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1889, being six months' interest on funding bond.

T. J. MALONEY,
No. 9 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1890, being six months' interest on funding bond.

T. J. MALONEY,
No. 9 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1891, being six months' interest on funding bond.

T. J. MALONEY,
No. 9 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1892, being six months' interest on funding bond.

T. J. MALONEY,
No. 9 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1890, being six months' interest on funding bond.

T. J. MALONEY,
No. 9 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1891, being six months' interest on funding bond.

T. J. MALONEY,
No. 9 (series A). *County Treasurer.*

$40. $40.

IN THE STATE OF COLORADO,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1892, being six months' interest on funding bond.

T. J. MALONEY,
No. 9 (series A). *County Treasurer.*

96 (*Copy of Ex. B*—Continued.)

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1886, being six months' interest on funding bond.

T. J. MALONEY,
No. 10 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1887, being six months' interest on funding bond.

T. J. MALONEY,
No. 10 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1887, being six months' interest on funding bond.

T. J. MALONEY,
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T. J. MALONEY,
No. 10 (series A). *County Treasurer.*

(*Copy of Ex. B*—Continued.)

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1889, being six months' interest on funding bond.

T. J. MALONEY,
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THE COUNTY OF GUNNISON,

In the State of Colorado,

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T. J. MALONEY,
No. 10 (series A). *County Treasurer.*

97

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1890, being six months' interest on funding bond.

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THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1891, being six months' interest on funding bond.

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THE COUNTY OF GUNNISON,

In the State of Colorado,

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T. J. MALONEY,
No. 10 (series A). *County Treasurer.*

(*Copy of Ex.* (—)—Continued.)

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1886, being six months' interest on funding bond.

T. J. MALONEY,
No. 11 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1887, being six months' interest on funding bond.

T. J. MALONEY,
No. 11 (series A). *County Treasurer.*

98

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1887, being six months' interest on funding bond.

T. J. MALONEY,

No. 11 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1888, being six months' interest on funding bond.

T. J. MALONEY,

No. 11 (series A). *County Treasurer.*

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THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1888, being six months' interest on funding bond.

T. J. MALONEY,

No. 11 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1889, being six months' interest on funding bond.

T. J. MALONEY,

No. 11 (series A). *County Treasurer.*

(*Copy of Ex. B*—Continued.)

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1889, being six months' interest on funding bond.

T. J. MALONEY,

No. 11 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1890, being six months' interest on funding bond.

T. J. MALONEY,

No. 11 (series A). *County Treasurer.*

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THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1890, being six months' interest on funding bond.

T. J. MALONEY,

No. 11 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

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T. J. MALONEY,

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99

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T. J. MALONEY,

No. 11 (series A). *County Treasurer.*

(*Copy of Ex. B*—Continued.)

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1886, being six months' interest on funding bond.

T. J. MALONEY,

No. 12 (series A). *County Treasurer.*

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THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1889, being six months' interest on funding bond.

T. J. MALONEY,

No. 65 (series A). *County Treasurer.*

109 (*Copy of Ex. B*—Continued.)

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

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T. J. MALONEY,
No. 66 (series A). *County Treasurer.*

110 (*Copy of Ex. B*—Continued.)

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1886, being six months' interest on funding bond.

T. J. MALONEY,
No. 98 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1887, being six months' interest on funding bond.

T. J. MALONEY,
No. 98 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1887, being six months' interest on funding bond.

T. J. MALONEY,
No. 98 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1888, being six months' interest on funding bond.

T. J. MALONEY,
No. 98 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1888, being six months' interest on funding bond.

T. J. MALONEY,
No. 98 (series A). *County Treasurer.*

$40. $40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1889, being six months' interest on funding bond.

T. J. MALONEY,
No. 98 (series A). *County Treasurer.*

(*Copy of Ex. B*—Continued.)

$40. $40.

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In the State of Colorado,

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T. J. MALONEY,
No. 98 (series A). *County Treasurer.*

111

\$40. \$40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

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T. J. MALONEY,
No. 98 (series A). *County Treasurer.*

\$40. \$50.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1891, being six months' interest on funding bond.

T. J. MALONEY,
No. 98 (series A). *County Treasurer.*

\$40. \$40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

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T. J. MALONEY,
No. 98 (series A). *County Treasurer.*

\$40. \$40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of March, 1892, being six months' interest on funding bond.

T. J. MALONEY,
No. 98 (series A). *County Treasurer.*

\$40. \$40.

THE COUNTY OF GUNNISON,

In the State of Colorado,

Will pay the bearer forty dollars, at the office of the county treasurer, in the city of Gunnison, or at the Chase national bank, in the city of New York, on the first day of September, 1892, being six months' interest on funding bond.

T. J. MALONEY,
No. 98 (series A). *County Treasurer.*

112 (COPY OF EXHIBIT C.)

E. H. Rollins & Sons, bankers, successors to the Rollins Investment Company.

\$25,000. No. 31447.

DENVER, COLO., *June* 16, 1892.

Pay to the order of Joseph Standley \$25,000.00—twenty-five thousand & $\frac{00}{100}$ dollars.

JAS. H. MORRIS, *Cashier.*

To the Colorado national bank, Denver, Colo.

Endorsed on the (bank): "Joseph Standley."
"Denver clearing-house. Paid. 7. Jun- 18, 1892. Denver national bank."

(*Copy of Exhibit C*—Continued.)

E. H. Rollins & Sons, municipal bonds, Denver, Colo., New York city, N. Y., Boston, Mass.

DENVER, COLO., *June* 16, 1892.

Bo't of J. Standley.

Dona Ana C. H. bonds:	
$11,400, at	$11,000
Gunnison Co. bonds:	
10,000 & coupons No. 8 sub. attached	14,000
	25,000

C'k on Colo. nat. bank, No. 31447, for $25,000.

113 EXHIBIT D.

Abstract of the assessment of Gunnison county, State of Colorado, for the year A. D. 187–, as required by law and as corrected by the county board of equalization.

Number of—		Valuation.
Acres of land	1,580	12,858
Farming		
Meadow		
Pasture		
Timber		
Coal		
Improvement on lands		26,186
Miles of railroads		
Average value of merchandise		70,482
Amount of capital employed in manufactures		2,125
Town and city lots	2,748	90,165
Improvements on town lots		19,855
Horses	879	35,626
Blooded 1		
" 2		
" 3		
" 4		
Total		
American 1		
" 2		
" 3		
" 4		
Total		
Graded 1		
" 2		
" 3		
" 4		
Total		

Duplicate.

Bronchos, broken, 1			
" " 2			
" " 3			
" " 4			
Total			
Bronchos, unbroken, 1			
" " 2			
" " 3			
" " 4			
Total			257,297
			257,297
Mules and asses		227	14,505
Broken mules 1			
" " 2			
" " 3			
" " 4			
Total			
Mules in herd 1			
" " 2			
" " 3			
" " 4			
Total			
Cattle		2,739	366,623
Bulls 1			
" 2			
" 3			
" 4			
Total			
114 Thoroughbreds 1			
" 2			
" 3			
" 4			
Total			
Dairy 1			
" 2			
" 3			
" 4			
Total			
American 1			
" 2			
" 3			
" 4			
Total			
Graded 1			
" 2			
" 3			
" 4			
Total			

Texas or Mexican 1		
" " 2		
" " 3		
" " 4		
Total		
Sheep		
Blooded 1		
" 2		
" 3		
" 4		
Total		
Graded 1		
" 2		
" 3		
" 4		
Total		
Mexican 1		
" 2		
" 3		
" 4		
Total		
The figures "1, 2, 3, 4," indicate the age in each class.		
Swine	30	194
Goats		
All other animals	52	1,092
Musical instruments	19	774
Clocks and watches	231	5,424
Jewelry, gold and silver plate		376
Amount of money and credits		57,334
Carriages and vehicles of every description	224	8,754
Household property		11,570
All other property		123,960
Bank stocks or shares in any national bank or banking association, or stock in any moneyed corporation of loan or discount, located in this county		78,650
Stocks or shares in any other corporation or company doing business in this State		
Total valuation		596,553
Amount of premiums taken by insurance companies during the previous year, as required by section 13, page 746, General Laws, 1877		
No. of polls	940	

115 I hereby certify that the above and foregoing is a full, true and correct abstract of the assessment of this county, as required by law.

Seal Gunnison County, Colorado.

In testimony whereof, I have hereunto set my hand, and affixed my official seal this 30th day of July, A. D. 1880.

SAMUEL B. HARVEY,
Clerk of Gunnison County, Colorado.

NOTE.—County clerk should make out these abstracts in duplicate, and retain one copy for reference.

STATE OF COLORADO, *County of Gunnison,* } ss:

I, Sam'l P. Spencer, county clerk and recorder, in and for the county of Gunnison, State aforesaid, do hereby certify that the within and foregoing is a full, true and correct copy of the abstract of the assessment of Gunnison county, Colo., for the year 1880, as the same appears among the files of my office.

Witness my hand and official seal, at Gunnison, this 9th day of June, A. D. 1894.

[SEAL.]

SAM. P. SPENCER,
County Clerk and Recorder,
By JOHN H. McCORMICK, *Deputy.*

Indorsed: Abstract of assessment of Gunnison county for the year 1880. Duplicate. (D.)

EXHIBIT E.

Abstract of the assessment of Gunnison county, State of Colorado, for the year A. D. 187–, as required by law and as corrected by the county board of equalization.

Number of—		Valuation.
7,249	Acres of land	53,576
	Farming	
	Meadow	
	Pasture	
	Timber	
	Coal	
	Improvements on lands, $7,849; public lands, 34,931	42,780
	Miles of railroads	
	Average value of merchandise	233,305
	Amount of capital employed in manufactures	60,325
	Town and city lots	499,019
915	Horses	56,782
	Blooded 1	
	" 2	
	" 3	
	" 4	
	Total	

116	American 1	
	" 2	
	" 3	
	" 4	
	Total	
	Graded 1	
	" 2	
	" 3	
	" 4	
	Total	
	Bronchos, broken, 1	
	" " 2	
	" " 3	
	" " 4	
	Total	
	Bronchos, unbroken, 1	
	" " 2	
	" " 3	
	Bronchos, unbroken, 4	
	Total	
202	Mules and asses	16,070
	Broken mules 1	
	" " 2	
	" " 3	
	" " 4	
	Total	
	Mules in herd 1	
	" 2	
	" 3	
	" 4	
	Total	
	Asses—see mules above.	
4,659	Cattle	75,082
	Bulls 1	
	" 2	
	" 3	
	" 4	
	Total	
	Thoroughbreds 1	
	" 2	
	" 3	
	" 4	
	Total	
	Dairy 1	
	" 2	
	" 3	
	" 4	
	Total	

	American 1	
	" 2	
	" 3	
	" 4	
	Total	
	Graded 1	
	" 2	
	" 3	
	" 4	
	Total	
	Texas or Mexican 1	
	" 2	
	" 3	
	" 4	
	Total	
117	Sheep—none.	
	Blooded 1.. Graded 1.. Mexican 1..	
	" 2.. " 2.. " 2..	
	" 3.. " 3.. " 3..	
	" 4.. " 4.. " 4..	
	Total.... Total... Total.....	
	The figures "1, 2, 3, 4," indicate the age in each class.	
10	Swine	79
	Goats—none.	
16	All other animals	437
40	Musical instruments	1,731
282	Clocks and watches	4,962
	Jewelry, gold and silver plate	265
	Amount of money and credits	73,144
202	Carriages and vehicles of every description	11,387
	Household property	22,471
	All other property	99,897
	Bank stock, or shares in any national bank or banking association, or stock in any moneyed corporation of loan or discount, located in this county	15,650
	Stock or shares in any other corporation or company doing business in this State	
	Total valuation	$1,266,962 00
	Amount of premiums taken by insurance companies during the previous year, as required by section 13, page 746, General Laws 1877	
	Military polls	1,362

I hereby certify that the above and foregoing is a full, true, and correct abstract of the assessment of this county, as required by law.

Seal Gunnison County, Colorado.

In testimony whereof I have hereunto set my hand and affixed my official seal this 20th day of July, A. D. 1881.

J. R. HINKLE,
Clerk of — County, Colorado.

NOTE.—County clerks should make out these abstracts in duplicate and retain one copy for reference.

STATE OF COLORADO, *County of Gunnison,* } ss.

I, Sam'l P. Spencer, county clerk and recorder in and for the county of Gunnison, State aforesaid, do hereby certify that the within and foregoing is a full, true, and correct copy of the abstract of the assessment of Gunnison county, Colo., for the year 1881, as the same appears among the files of my office.

Witness my hand and official seal, at Gunnison, this 9th day of June, A. D. 1894.

[SEAL.]

SAM. P. SPENCER,
County Clerk and Recorder,
By JOHN H. McCORMICK, *Deputy.*

Indorsed: 1881. Abstract of assessment of Gunnison county for the year 1881. Duplicate.

118

EXHIBIT F.

Abstract of assessment of Gunnison county, State of Colorado, for the year A. D. 1882, as required by law and as corrected by the county board of equalization.

Number of—		Valuation.
12,299	Acres of land	92,889
	Farming	
	Meadow	
	Pasture	
	Timber	
	Coal	
	Improvement on lands	125,062
59.237	Miles of railroads	423,774 86
	Average value of merchandise	233,798
	Amount of capital employed in manufactures	24,735
	Town and city lots	836,051
2,194	Horses	116,730
	Blooded 1	
	" 2	
	" 3	
	" 4	
	Total	

	American 1		
	" 2		
	" 3		
	" 4		
	Total		
	Graded 1		
	" 2		
	" 3		
	" 4		
	Total		
	Bronchos, broken 1		
	" " 2		
	" " 3		
	" " 4		
	Total		
	Bronchos, unbroken 1		
	" " 2		
	3		
	Am't for'd		$1,853,039 86
	Bro't for'd		$1,853,039 86
	Bronchos, unbroken 4		
	Total		
868	Mules		58,760
	Broken mules 1		
	" " 2		
	" " 3		
	" " 4		
	Total		
	Mules in herd 1		
	" 2		
	" 3		
	" 4		
	Total		
	Asses		
9,647	Cattle		150,146
	Bulls 1		
	" 2		
	" 3		
	" 4		
	Total		
119	Thoroughbreds 1	Dairy 1	
	" 2	" 2	
	" 3	" 3	
	" 4	" 4	
	Total	Total	
	American 1		
	" 2		
	" 3		
	" 4		
	Total		

	Graded 1....	Texas or Mexican 1....	
	" 2....	" " 2....	
	" 3....	" " 3....	
	" 4....	" " 4....	
	Total..	Total...	
1	Sheep.....		2
	Blooded 1.....		
	" 2...		
	" 3.....		
	" 4.....		
	Graded 1.....		
	" 2		
	" 3..... ...		
	" 4.....		
	Total....		
	Mexican 1.....		
	" 2.....		
	" 3...		
	" 4.....		
	Total.		

The figures "1, 2, 3, 4," indicate the age in each class.

12	Swine..... . ..''''	120	
	Goats.....		
27	All other animals.....	285	
68	Musical instruments.....	4,510	
461	Clocks and watches.....	8,887	
	Jewelry, gold and silver plate..... ...	2,352	
	Amount of money and credits.....	73,720	
774	Carriages and vehicles of every description.	33,431	
	Household property.....	13,630	
	All other property.....	107,712	14
	Bank stock or shares in any national bank or banking association, or stock in any moneyed corporation of loan or discount, located in this county...	31,561	
	Stock or shares in any other corporation or company doing business in this State.....		
	Amount of premiums taken by insurance companies during the previous year, as required by section 13, page 746, General Laws, 1877	2,799	
	Grand total valuation of county.....	$2,340,955	00
1,080	No. of military polls.		

I hereby certify that the above and foregoing is a full, true, and correct abstract of the assessment of this county as required by law.

Seal Gunnison County, Colorado.

In testimony whereof I have hereunto set my hand and affixed my official seal this 25th day of August, A. D. 1882.

A. J. BEAN,
Clerk of Gunnison County, Colorado.

NOTE.—County clerks should make these abstracts in duplicate, and retain one copy for reference.

120 STATE OF COLORADO, } ss:
County of Gunnison, }

I, Sam'l P. Spencer, county clerk and recorder in and for the county of Gunnison, State aforesaid, do hereby certify that the within and foregoing is a full, true, and correct copy of the abstract of the assessment of Gunnison county, Colo., for the year 1882, as the same appears among the files of my office.

Witness my hand and official seal, at Gunnison, this 9th day of June, A. D. 1894.

[SEAL.]

SAM. P. SPENCER,
County Clerk and Recorder,
By JOHN H. McCORMICK, *Deputy.*

Indorsed: 1882. State of Colorado. Abstract of assessment of Gunnison county for the year 1882. Received at office of State auditor —— —, 188-, — m. —, amount charged and duplicate sent to county clerk —— —, 188-. L. B., page —.

EXHIBIT G.

Financial statement of Gunnison county for the six months ending December 31, 1881, as appears from the books of the county clerk and treasurer of said county.

Fund.	Balance June 30, 1881.	Receipts to Dec. 31, 1881.	Totals.	Disbursed from June 30 to Dec. 31.
County	1,725 08	3,099 05	4,824 13	3,258 17
Road	51 77	1,007 05	1,058 82	929 24
School	657 84	790 07	1,447 91	561 68
Interest	156 96	82 78	239 74	1,610 20
Penalty	28 28	2 86	31 14	.....
Advertising	14 11	1 47	15 58	.....
Balance	.....	.....	.....	1,258 03
	2,634 04	4,983 28	7,617 32	7,617 32

Statement Showing the Condition of the Several County Funds December 31, 1881, as Appears from the Treasurer's Books.

1,565	96	County fund		
129	58	Road "		
886	23	School "		
		Interest "		1,370 46
31	14	Penalty "		
15	58	Advertising fund		
		Balance		1,258 03
$2,628	49			$2,628 49

121 *Statement of the Indebtedness of the County.*

Am't of warrants outstanding June 30, 1881	$29,690 44
Issued from July 1, 1881, to December 31, as per detailed statement	34,227 86
Total	$63,918 30
Am't warrants cancelled	6,359 29
Warrants outstanding Dec. 31, 1881	57,559 01
Bonded indebtedness, bearing interest at 10% per annum.	20,000 00
Total indebtedness	77,559 01

Over for detailed statement.

Detailed Account of the Expenditures of the County for the Six Months Ending Dec. 31, 1881, for which Warrants Have Been Drawn.

480	C. S. Nichols, dep. assessor	280 00
1	John M. McCormick, dep. sheriff	288 75
2	J. R. Hinkle, county clerk	260 80
3	John Howe, comm'r	175 00
4	E. C. Teachout, comm'r	150 00
5	Chas. Biebel, comm'r	125 00
6	George Yule, sheriff	308 65
7	" " "	12 00
8	" " "	103 50
9	W. A. Rogers, capturing "Coleman"	83 25
490	J. A. Wallingford, dist. clerk	151 65
1	Root and Olney, county printing	109 75
2	Chas. Haines, dep. sheriff	129 10
3	H. S. Roe, J. P.	15 00
4	O. H. Violet, taking testimony	10 00
5	Abercrombie and Hawley, counsel	30 00
6	Arey and Rickert, coffin pauper	12 00
7	J. J. Conrad, cleaning court-room	3 00
8	M. S. Waller, mdse. county judge	9 50
9	D. B. Spencer, State case	16 00

500	D. S. Michael, constable	40 00
1	E. H. Taylor, furniture	113 00
2	" " varnishing same	4 50
3	J. P. Kelly, treasurer	800 00
4	J. E. Clark, dep. sheriff	417 88
5	J. Hopkins, witness	10 60
6	G. W. Hering, "	2 50
7	J. A. Cowan, "	5 00
8	W. McIntray, "	5 00
9	M. A. Roblee, "	5 00
510	J. P. Anderson, "	55 00
11	N. Meyers, "	13 80
12	Thos. Mitchell, "	10 00
13	Louis Barthell, "	9 50
14	G. W. Hering, G. juror	25 00
15	T. H. Scott, "	25 00
		$3,814 73

122

	Brought forward	3,814 73
516	W. H. Wadsworth, G. juror	25 00
17	C. F. Hart, "	25 00
18	Gustav Levi, "	25 00
19	J. C. Billips, "	25 00
520	J. P. Elsehu, "	27 10
1	Geo. Riley, "	25
2	E. C. Teachout, "	28
3	D. Keiley, "	25
4	A. O. Milner, assessor	257
5	W. T. Clark, deputy assessor	252
6	H. E. Peck, " "	152
7	H. Rott, "dieting" prisoners	62
8	C. F. Hart, mdse	6 25
9	Ed. Sills and Co., mdse	37 25
530	Schluter and Spengel, mdse	23 20
1	Burton, Moses and Bros., mdse	15 60
2	C. Parks, "	6 50
3	M. L. Bloch, "	2 25
4	L. Oswald and Co., "	24
5	Hartman and Spencer, "	26 60
6	J. P. Kelly, treasurer	15 30
7	Fred Kruger, supplies	50 87
8	B J. Wolf, "	26 60
9	Culver, P. H. & Co., books	380 87
540	Halloway and Van Bibber, fixtures	19 75
1	W. O. Stephens, juror	25
2	C. C. Parks, "	2 50
3	S. I. Silvius, "	25
4	P. Purrier, "	25
5	C. R. Winters, "	25
6	S. W. Warwick, "	25

7	J. G. Davidson, juror	25	
8	C. P. Harper, "	25	
9	J. Hess	8	50
550	T. J. Forham, care pauper	40	
		$5,603	87
	Brought forward	5,603	87
551	Frank Northway, juror	25	
2	Lewis Cheney, dist. court	593	80
3	C. A. Pierson, juror	25	
4	W. A. Vrock, "	2	
5	W. J. McLees, "	2	
6	A. H. Wilson, "	25	
7	Wm. Cook, "	25	
8	T. J. Wiehl, "	25	
9	Geo. B. Spohr, witness	7	30
560	Durrell and Watson, comm. prisoner	15	
1	J. W. Danies, witness	8	60
2	A. W. Saylor, juror	25	
3	E. H. Taylor, coffin for pauper	12	
4	News-Democrat, printing	355	10
5	R. Pray, G. juror	25	
6	R. C. Bailey, witness	2	50
7	N. Jennings, sup't	117	50
8	" boarding prisoners	349	75
9	Parks and Co., repairs	29	45
570	J. T. Shumate, J. P	9	
1	F. T. Kingsley, court	6	45
2	Geo. Yule, sheriff	10	
3	" " "	14	25
4	" " "	3	50
5	" " "	1	90
6	" " "	29	
123			
7	" " "	30	
8	" " "	21	15
9	" " "	12	
580	" " "	12	
1	" " "	7	50
2	" " "	19	
3	F. McMaster, county attorney	250	
4	R. C. Bailey, constable	8	60
5	Wm. Marchant, board pauper	25	
		$7,733	22
	Brought forward	7,733	22
586	N. C. Montgomery, care of pauper	13	50
7	Wm. Foster	18	

8	J. C. Selliway, bdg. pauper	23	
9	W. D. Bull, " "	22	
590	J. E. Broemser, bdg. prisoner	17	
1	J. E. Clark, dep. sheriff	20	
2	Mills and Johnson, handcuffs	6	
3	R. C. Bailey, jailor	42	50
4	T. J. May, bdg. pauper	40	
5	Levi Wood	38	
6	E. C. Reid, witness	16	20
7	T. N. Snow, med. for prisoner	7	
8	J. B. Fry, witness	5	80
9	R. C. Bailey, constable	10	
600	J. P. Kelly, treasurer	100	
1	J. E. Clark, "dieting" prisoner	164	
2	Geo. Yule, sheriff	12	60
3	E. H. Taylor, poor-house	1,000	
4	W. J. Fine, county jail	500	
5	W. J. Fine, county jail	500	
6	W. J. Fine, county jail	600	
7	J. M. McCormick, dep. sheriff	286	
8	Jno. Howe, comm'r	125	
9	E. C. Teachout, comm'r	125	
610	W. P. Lamb, road-viewer	11	60
11	K. Bradley, " "	11	60
12	Chas. Biebel, comm'r	125	
13	W. J. Fine, county jail	1,200	
17	W. J. Fine, sup't poor-house	100	
18	W. McIntroy, constable	65	35
19	J. E. Clark, dieting prisoners	404	25
620	J. E. Clark, jailor	211	
1	E. H. Stafford, sheriff of Chaffee county	128	
2	Town of Gunnison, use jail	600	
3	J. W. Dollison, J. P	34	85
		14,316	47
	Am't forward	14,316	47
624	T. J. Allison, constable	12	20
5	Chas. Hay, prisoner	95	
6	J. A. Jacobs, blankets for pauper	7	00
7	T. T. Childers, constable	6	50
8	Frank Ensign, jail guard	45	00
630	A. M. Sheriff, boarding pauper	47	50
631	J. E. Clark, dep. sheriff	163	
2	L. W. Clark, jail guard	80	
3	N. Jennings, boarding pauper	940	
4	M. M. Thompson, boarding pauper	16	33
5	Culver, P. H. and Co., books	785	65
6	E. C. Selliman, juror	9	70
7	Laura Heaton, witness	13	20
8	A. J. Heaton, "	15	50

124		
9	E. S. Fluke, juror	27 70
640	J. E. Clark, dep. sheriff	255 55
1	" " " " "	125 50
2	Richard Lindly, boarding pauper	13
3	J. F. Spencer, dep. sheriff	85 40
4	Geo. A. Hawley, attorney	100 00
5	J. E. Clark, dep. sheriff	163 60
6	Arey and Rickerts, coffin pauper	118
7	Wm. Marchant, jailor	66
8	Ed. Sills & Co., blankets	96 96
9	J. N. McLees, boarding paupers	33
650	Holloway and Van Bibber, shackles	23 00
1	W. A. Spencer, furniture	207 00
2	J. N. McLees, boarding pauper	55 30
3	Dr. C. F. Hart, drugs for jail	8 75
4	W. H. Whalen, constable	24 50
5	R. C. Bailey, State case	49 60
6	Wm. McWilson, cap. murder case	33
7	E. Ebers, plastering jail	18
8	Town of Gunnison, burying pauper	5
9	O. E. Cox, constable	41 40
660	Forward	18,103 21
	Forward	18,103 21
660	B. A. Scott, dep. sheriff	110 50
1	A. O. Milner, assessor	25 00
2	J. N. McLees, State case	5 35
3	Free Press Co., printing	22 50
4	S. Richardson, J. P.	50 30
5	R. D. Mobley, J. P.	55 55
6	E. A. Pace, J. P.	95 95
7	Jno. Hayes, dep. assessor	50
8	Gunnison Review, printing	123 25
9	J. R. Roberts, constable	12 00
670	J. F. Spencer, dep. sheriff	20
1	F. D. Steele and Co., hardware	38 40
2	M. S. Waller, lunacy case	29 75
3	Jas. Riley, juror	2 50
4	W. T. Hill, "	2 50
5	A. M. Sheasser, "	2 50
6	J. N. Leighton, "	2 50
7	Wm. Determeyer, juror	2 50
8	Dr. A. J. Robinson, juror	2 50
9	Dr. Rockeffeller, witness	2 50
680	Dr. N. Jennings, "	2 50
1	Ben. Beeson, dep. sheriff	192 50
2	E. H. Taylor, county poor-house	582 00
3	W. J. Fine, jail	3,000

4	Dr. N. Jennings, county physician	55	75
5	Chas. Haines, dep. sheriff	192	10
6	F. D. Steele and Co., jail	71	
7	W. J. Fine, jail	600	
8	W. J. Fine, jail	600	
9	J. R. Hinkle, county clerk	1,726	60
690	McCormick and O'Conner, scaffold	558	
1	Mrs. H. C. Mason, nursing	275	
2	S. A. Jeming, paupers	125	
3	N. Jennings, physician	539	50
4	Park and Co., bridge	134	40
	Forward	27,413	61
	Am't forward	27,413	61
695	J. R. Hinkle, county clerk	28	
6	W. J. Fine, jail	450	
125			
7	R. C. Bailey, constable	204	50
8	J. E. Clark, bdg. prisoners	325	15
9	Thos. A. Lester, bailiff	241	20
700	W. J. Fine, jail	420	
1	E. A. Pace, State case	48	30
2	R. F. Pace, " "	112	60
3	J. McCormick, "	484	50
4	C. D. Gage, juror	42	50
5	W. J. Fine, jail	410	
6	W. J. Fine, jail	400	
7	H. H. Halford, juror	35	
8	E. C. Teachout, coal	20	
9	W. J. Fine, jail	250	
710	E. C. Teachout, comm'r	125	
11	Chas. Biebel, comm'r	125	
12	N. Jennings, county paupers	1,759	
		32,893	80
	True footing	32,894	36

Road Warrants.

	W. J. Fine	50	
	B. F. Sherwood	87	
	W. Holleran	33	75
	W. J. Fine	175	
	De Vries, Buss and De Vries	37	50
	R. Pomeroy	4	26
	Jno. A. Ross	19	50
	L. Cortay	5	
	J. W. Boulden	35	

W. J. Fine	125
W. Holleran	165
Holt and Axtell	332 35
A. Augustine	124 70
John Howe	140
	$1,334 06

STATE OF COLORADO, } ss:
County of Gunnison, }

We hereby certify that the foregoing is a true, full, and correct statement of the financial condition of Gunnison county for the six months ending December 31, 1881.

E. C. TEACHOUT,
CHARLES BIEBEL,
JOHN SWEENEY,
Commissioners.

Attest: A. J. BEAN,
County Clerk.

	32,893 80	32,894 36
Error in footing	56	
War. No. 512 should be 10 60	60	
" 554 " 2 50	50	
" 555 " 2 50	50	
" 561 " 5 50		10
" 648 " 96		96
" 701 " 48 70		40
Balance		14
True amount	32,895 96	32,895 96

126 STATE OF COLORADO, } ss:
County of Gunnison, }

I, Sam'l P. Spencer, county clerk and recorder in and for the county of Gunnison, State aforesaid, do hereby certify that the within and foregoing is a full, true, and correct copy of financial statement of Gunnison county, Colo., for the six months ending December 31, 1881, as the same appears in the records of Gunnison county, in Book of Statements, pages 3 to 11, both inclusive.

Witness my hand and official seal, at Gunnison, this 11th day of March, 1893.

[SEAL.]

SAM. P. SPENCER,
County Clerk and Recorder.

Indorsed: Certified copy of financial statement of Gunnison county, Colorado, for the six months ending Dec. 31st, 1881. Exhibit G.

EXHIBIT H.

Financial statement of Gunnison county for the six months ending June 30, 1882, as appears from the books of the county clerk and treasurer of said county.

Fund.	Balance Dec. 31, 1881.	Receipts to June 30, 1882.	Totals.	Disbursed Jan. 1, '82, to June 30, '82.
County	1,565 96	6,461 78	8,027 74	7,972 61
Road	129 58	11,904 64	12,034 22	3,085 06
School	886 23	2,161 50	3,047 73	1,438 68
License	.....	933 33	933 33	227 88
Interest	.....	212 60	212 60	212 60
Penalty	31 14	.....	31 14	.....
Advertising	15 58	.....	15 58	.....
Int. on Co. bonds	.....	1,641 50	1,641 50	976 07
	2,628 49	23,315 35	25,943 84	13,912 90

Statement Showing the Condition of the Several County Funds June 30' 1882, as Appears from the Treasurer's Books.

County		55 13
Road		8,949 16
School		1,609 05
License		705 45
Penalty		31 14
Advertising		15 58
Interest on county bonds		665 43
		12,030 94
Less interest overpaid on county warrants last report	1,370 46	
Less interest overpaid on county warrants for six months ending June 30, 1882	536 44	
		1,906 79
		10,124 15

127 *Statement of the Indebtedness of the County.*

Am't of warrants outstanding Dec. 31, 1881		57,559 01
Boarding paupers	3,041 85	
Work on jail cells, etc	2,288 96	
For'd	5,330 81	57,559 01

Bro't for'd	5,330 81	57,559 01
County and dist. attorney's fees	2,443 75	
Fees in State cases	5,016 95	
Sheriff's fees	8,569 02	
County supplies	1,119 06	
County commissioners	500	
County treasurer	1,580 31	
County physician and medicine	2,828 70	
Election fees	1,099 15	
Building hospital	918 56	
Sup't public instruction	503 60	
Coroner's inquest	297 10	
Books, stationery, and printing	2,468 61	
Grand and petit juries	3,328 10	
Jail and court-house furniture	1,998 37	
Boarding prisoners	1,707 25	
Stenographer	440	
County clerk and cash expenses	825	
County treasurer's safe	1,557 09	
Court-house janitor	80	
Insurance, county building	617 75	
Work on court-house	484 35	
Transcribing old records	400	
Clerk of county court	48 35	
Surveying county line	200	
Collecting liquor licenses	292	
Redemption of court-house warrants	886 11	
Assessor	150	
		45,689 99
Total		103,249 00
Am't of warrants cancelled from Dec. 31, 1881, to June 30, 1882		8,200 49
		95,048 51
Bonded indebtedness bearing interest at 10 % per annum.		20,000
		115,048 51
Road warrants issued from Dec. 31, 1881, to June 30, 1882	6,728 04	
Am't cancelled	3,085 06	
		3,642 98
Total county debt		118,691 49

STATE OF COLORADO, } ss:
County of Gunnison, }

We hereby certify that the foregoing is a true, full, and correct

statement of the financial condition of Gunnison county for the six months ending June 30, 1882.

E. C. TEACHOUT,
CHAS. BIEBEL,
JOHN SWEENEY,
Commissioners.

Attest: A. J. BEAN,
County Clerk.

128 STATE OF COLORADO, }
County of Gunnison, } ss:

I, Sam'l P. Spencer, county clerk and recorder in and for the county of Gunnison, State aforesaid, do hereby certify that the within and foregoing is a full, true, and correct copy of financial statement of Gunnison county, Colorado, for the six months ending June 30th, 1882, as the same appears in the records of Gunnison county, in Book of Statements, pages 12, 13, and 14.

Witness my hand and official seal, at Gunnison, this 11th day of March, 1893.

[SEAL.]

SAM. P. SPENCER,
County Clerk and Recorder.

Indorsed: Certified copy of financial statement of Gunnison county, Colorado, for the six months ending June 30, 1882. Exhibit H.

EXHIBIT I.

Financial statement of Gunnison county for the six months ending December 30, 1882, as appears from the books of the county clerk and the treasurer of said county.

Funds.	Balance June 30, 1882.	Receipts to Dec. 30, 1882.	Totals.	Disbursed June 30 to Dec. 30, '82.
County	55.13	1,831.08	1,886.21	1,578.86
Road	8,949.16	703.22	9,652.38	8,217.31
School	1,609.05	1,200.91	2,809.96	1,281.32
License	705.45	1,202.50	1,907.95	589.76
Penalty	31.14	.....	31.14	.....
Advertising	15.58	1.00	16.58	.....
In Co. bonds	665.43	210 12	875.55	256.
Gen'l int. fund	.....	17.38	17.38	6.28
	12,030.94	5,166.21	17,197.15	11,929.48

Balances Dec. 30, 1892.

County				307 35
Road				1,435 07
School				1,528 64
License				1,318 19
Penalty				31 14
Advertising				16 58
Interest on county bonds				619 55
General interest account				11 15
Interest account overpaid last report	1,906 79			
Less amount collected since	203 40			
		1,703 39		
Balance in treasury December 30, 1882		3,564 28		
		5,267 67		5,267 67

129 *Statement of the Indebtedness of the County.*

Am't of warrants outstanding June 30, 1882			103,249 00
Surveying county line	9,545 75		
County commissioners	1,031		
Sheriff's fees	14,226 98		
County clerk	1,000		
Copying old records	1,278 65		
Constable	1,910 88		
Paupers	4,570 09		
Carried for'd		$33,563 35	$103,249 00
Amount forward		33,563 35	103,249 00
County physician	1,834 60		
Denver exposition	6,000		
Justice of the peace	1,906 95		
County attorney	866 66		
County assessor	3,022 50		
Witness fees	8,194 70		
County supplies	3,236 97		
Sup't of schools	649 75		
Lunacy cases	1,309 25		
Clerk of the dist. court	1,070 35		
Juries	3,963 45		
Election	89 35		
Clerk fees	800		
Coroners	391 35		
District attorney	1,157		
Clerk of county court	140		
Stenographer	610		
Printing, stationery, books, etc	2,997 39		
County treasurer	3,060 95		
Court-house *fence*	1,761 25		
Gas and water fixtures	1,900		

Abst. of assessment-roll	590 50	
Collecting licenses	94 28	
Use of telephone	64 97	
Att'y State cases	150	
Repairs court-house and jail	1,200 70	
		80,939 27
Total		184,188 27
Am't of warrants cancelled and paid from June 30 to Dec. 30, 1882		1,567 36
		182,620 91
Bonded indebtedness bearing int. at 10% (C. H. bonds).		20,000
		202,620 91
Road warrants issued from June 30, 1882, to Dec. 30, 1882	90,342 95	
Am't cancelled and paid	8,200 81	
		82,142 14
Total debt		$284,763 05
Total debt bro't forward		284,763 05
Am'ts warrants cancelled and funded at 8%	94,437 26	
Interest	6,256 91	
		100,694 17
Total am't of warrants outstanding Dec. 30, 1882.		184,068 88

130 STATE OF COLORADO, } ss:
County of Gunnison, }

We hereby certify that the foregoing is a true, full and correct statement of the financial condition of Gunnison county for the six months ending Dec. 30, 1882.

E. C. TEACHOUT,
CHAS. BIEBEL,
JOHN SWEENEY,
Commissioners.

Attest: A. J. BEAN,
County Clerk.

Dated January 1, 1883.

STATE OF COLORADO, } ss:
County of Gunnison, }

I, Sam'l P. Spencer, county clerk and recorder in and for the county of Gunnison, State aforesaid, do hereby certify that the within and foregoing is a full, true and correct copy of financial statement of Gunnison county, Colorado, for the six months ending

Dec. 30th, 1882, as the same appears in the records of Gunnison county, in Book of Statements, pages 15, 16 and 17.

Witness my hand and official seal, at Gunnison, this 11th day of March, 1893.

[SEAL.] SAM. P. SPENCER,
County Clerk and Recorder.

Indorsed: Certified copy of financial statement of Gunnison county, Colorado, for the six months ending Dec. 30th, 1882. Exhibit I.

EXHIBIT J.

STATE OF COLORADO, }
County of Gunnison, } ss:

At a special meeting of the Board of County Commissioners for Gunnison County, Colorado, held at the court-house, in Gunnison, on the 21st day of August, A. D. 1882, there were present: E. C. Teachout, chairman; Chas. Biebel, commissioner; A. J. Bean, clerk.

Be it remembered that on the day last aforesaid among the proceedings of said board had and entered of record in County Commissioners' Record 2, at page 78, appears the following, to wit:

AUGUST 21, 1882.

Board met in special session.

Present: E. C. Teachout, chairman; Chas. Biebel, commissioner; A. J. Bean, clerk.

131 Whereas, this day a petition signed by fifty qualified electors of the county who have paid taxes upon property assessed to them in said county in the (preceeding) year to publish for a period of thirty days in a newspaper published within the county a notice requesting the holders of the warrants of the county to submit in writing to the board of county commissioners within thirty days from the date of the first publication of such notice a statement of the amount of the warrants of such county which they will exchange at par and accrued interest for the bonds of the county to be issued under the provisions of an act of the General Assembly of the State of Colorado, entitled "An act entitled An act to enable the several counties of the State to fund their floating indebtedness," approved February 21st, 1881, taking such bonds at par.

And upon the hearing and examination of said petition it being found by the board of county commissioners that the floating indebtedness of the county exceeds the sum of ten thousand dollars, and amounts to the sum of — it is hereby ordered that a notice be published by the board of county commissioners for the period of thirty days in a newspaper published in the county, to wit: the Daily News-Democrat, a newspaper published at the town of Gunnison in this county requesting the holders of the warrants of the county to submit in writing to the board of county commissioners within thirty days from the date of the first publication of said notice a statement of the amount of the warrants of the county which they

will exchange at par for the bonds of the county to be issued under the provisions of the above-mentioned act of the General Assembly of the State taking such bonds at par. On motion the meeting adjourned.

Attest: A. J. BEAN, *Clerk.*

STATE OF COLORADO, } ss:
Gunnison County, }

At a regular meeting of the Board of County Commissioners for Gunnison County, Colorado, held at the court-house in Gunnison on the 5th day of October, A. D. 1882, there were present: E. C. Teachout, chairman; Chas. Biebel, commissioner; John Sweeney, commissioner; A. J. Bean, clerk.

Be it remembered that among the proceedings of said board, had and entered of record on the day last aforesaid in County Commissioners' Record 2 at page 86, appears the following, to wit:

OCTOBER 5, 1882.

Board met in regular session.

Present: E. C. Teachout, chairman; Chas. Biebel, com'r; John Sweeney, com'r; A. J. Bean, clerk.

132 EXHIBIT "A."

Funding county debt.

Notice to Warrant-holders.

Notice is hereby given to all persons that a petition signed by fifty qualified electors of Gunnison county, Colorado, who have paid taxes upon property assessed to them in said county in the year 1881, has been presented to the Board of County Commissioners of said Gunnison County praying the said board of county commissioners to publish for the period of thirty days in a newspaper published within said Gunnison county a notice requesting the holders of the warrants of said county to submit in writing to the said board of county commissioners within thirty days from the date of the first publication of such notice a statement of the amount of warrants of said county which they will exchange at par and accrued interest for the (bounds) of said county to be issued under the provisions of an act entitled An act to enable the several counties of the State to fund their floating indebtedness, approved by the General Assembly of the State of Colorado, February 21st, 1881, taking such bonds at par.

And upon the hearing and examination of said petition the said board of county commissioners ordered that this notice be given and published as provided by section one of said act.

And all persons holding warrants of said county issued prior to the first publication of this notice are hereby requested to submit in writing to the said board of county commissioners within thirty days from the date of the first publication of this notice a statement

of the amount of the warrants of said county which they will exchange at par and accrued interest for the (bounds) of said county to be issued under the provisions of the act of the General Assembly above mentioned taking such bonds at par.

E. C. TEACHOUT,
CHAS. BIEBEL,
JOHN SWEENEY,
Board of County Commissioners, Gunnison County, Colorado.

Attest: A. J. BEAN,
Clerk of Board of County Commissioners.

September 2, 1882.

Affidavit of Publication.

STATE OF COLORADO, } ss:
County of Gunnison, }

I, F. P. Tanner, of said county of Gunnison do solemnly
133 swear that I am the manager of the News-Democrat, a newspaper printed and published in Gunnison in said county and State; and I further swear that the notice of which the annexed is a true copy has been published in said newspaper for the period of 33 days in the d-ily published every day except Monday and 29 times, and that the first publication of said notice was in said paper bearing date the second day of September, A. D. 1882, and the last publication of said notice was in said paper bearing date the fifth day of October, A. D. 1882.

F. P. TANNER, *Manager.*

Subscribed and sworn to before me this 11th day of November, A. D. 1882.

[NOTARIAL SEAL.] AARON HEINS,
Notary Public.

It is ordered that the certificate this day made and signed by the board of county commissioners stating and fixing the amount of the floating indebtedness of the county on the second day of September, A. D. 1882, at which time the first publication of the notice to warrant-holders was made under the provisions of an act entitled "An act entitled An act to enable the several counties of the State to fund their floating indebtedness, approved by the General Assembly of the State of Colorado, February 21st, 1881," be spread upon the records by the clerk and made a part thereof.

This is to certify that on, to wit, the 21st day of August, A. D. 1882, under the provisions of an act entitled "An act to enable the several counties of the State to fund their floating indebtedness" a petition of fifty of the electors of the county of Gunnison in the State of Colorado, who had paid taxes upon property assessed to them in said county in the preceding year was presented to the board of county commissioners of said county praying them to publish for the period of thirty days in a newspaper published within said county a notice requesting the holders of the warrants

of said county to submit in writing to the board of county commissioners within thirty days from the date of the first publication of such notice a statement of the amount of the warrants of said county which they would exchange at par and accrued interest for the bonds of said county to be issued under the provisions of the said act of the General Assembly taking such bonds at par.

This further certifies that pursuant to the prayer of said petition and in accordance with the provisions of said act of General Assembly the floating indebtedness of said county at the time of the presentation of said petition amounting to and exceeding the sum of ten thousand dollars the board of county commissioners
134 of said county have published for the period of thirty days in the Daily News-Democrat a newspaper published within said county a notice requesting the holders of the warrants of said county to submit in writing to the board of county commissioners of said county within thirty days from the date of the first publication of said notice a statement of the amount of the warrants of said county which they would exchange at par and accrued interest for the bonds of said county to be issued under the provisions of this act taking such bonds at par as shown by the certificate of the publishers of said newspaper with a printed copy of said notice annexed hereto attached and marked Exhibit "A" and made part of this certificate.

This further certifies that after the due publication of said notice as aforesaid and on the 5th day of October, A. D. 1882, the same being after all statements had been submitted by warrant-holders and had been examined and considered a petition of fifty of the electors of said county who had paid taxes upon property assessed to them in said county in the preceding year (A. D. 1881) was presented to the board of county commissioners of said county praying said board to submit at the next general election to the vote of the qualified electors of said county (—) shall have paid taxes on property assessed to them in said county in the preceding year (A. D. 1881) the question whether the board of county commissioners shall issue bonds of said county under the provisions of said act in exchange at par for the warrants of said county issued prior to the date of the first publication of the aforesaid notice.

And this certifies that upon the presentation of the said last-named petition it appearing that the floating indebtedness of said county was largely in excess of ten thousand dollars and so was at the time of the presentation of the said first-named petition.

It was ordered by the board of county commissioners aforesaid that at the next general election to be holden on the Tuesday succeeding the first Monday in November, A. D. 1882, there be submitted in accordance with said act of the General Assembly, to the vote of the qualified electors of said Gunnison county, who shall have paid taxes on property assessed to them in said county in the preceding year (A. D. 1881) the question whether the board of county commissioners of said county shall issue bonds of said county under the provisions of said act in exchange at par for the warrants of said county issued prior to the second day of September,

A. D. 1882, said day being the day on which the first publication was made of the notice by them heretofore given to warrant-holders as hereinbefore mentioned.

135 And it was at the same time also ordered by the said board of county commissioners that there be published for the period of at least thirty days immediately preceding said general election in some newspaper published within said county a notice that said question will be submitted to the duly qualified electors of said county as aforesaid at said election.

This further certifies that on the said 21st day of August, A. D. 1882, at which time the first publication was made of the notice to warrant-holders as hereinbefore mentioned the floating indebtedness of said Gunnison county amounted to the sum of one hundred and seventy-four thousand one hundred and fifteen and $\frac{29}{100}$ dollars ($174,115.29) and accrued interest.

In testimony whereof the County Commissioners of said Gunnison County in the State of Colorado, have hereunto set our hands and have caused the seal of our said county to be hereto affixed this fifth day of October A. D. 1882.

E. C. TEACHOUT, *Chairman.*
CHAS. BIEBEL,
JOHN SWEENEY,
County Commissioners.

[COUNTY SEAL.] A. J. BEAN,
County Clerk and Recorder and Clerk of Board of County Commissioners.

STATE OF COLORADO, } ss:
Gunnison County, }

At an adjourned regular meeting of the Board of County Commissioners for Gunnison County, Colorado, held at the court-house in Gunnison on the 18th day of November A. D. 1882 there were present: E. C. Teachout, chairman; Chas. Biebel, commissioner; John Sweeney, commissioner; A. J. Bean, clerk.

Be it remembered, that among the proceedings of said board had and entered of record on the day last aforesaid in County Commissioners' Record 2 at page 102, appears the following, to wit:

Nov. 18, 1882.

Board met pursuant to adjournment.

E. C. Teachout, chairman; Chas. Biebel, com'r; John Sweeney, com'r; A. J. Bean, clerk.

Whereas, on the 21st day of August, A. D. 1882, a petition signed by fifty qualified electors of the county of Gunnison, Colo-
136 rado, who had paid taxes on property assessed to them in the said county in the year 1881, was presented to the Board of County Commissioners of said county of Gunnison in words and figures as follows, to wit:

To the honorable the Board of County Commissioners of Gunnison County, Colorado:

Your petitioners the undersigned electors of said county repre-

sent to your honorable body that we each and all of us have paid taxes upon property assessed to us in said county in the preceding year.

And further we represent that the said county of Gunnison has now a floating indebtedness exceeding ten thousand dollars and we earnestly pray your honorable body to fund or cause to be funded the entire floating indebtedness of this Gunnison county.

And to that end we pray you to publish for the period of thirty days in a newspaper within said county a notice requesting the holders of the warrants of said county to submit in writing to the board of county commissioners within thirty days from date of the first publication of such notice a statement of the amount of the warrants of said county which they will exchange at par and accrued interest for the bonds of said county to be issued under the provisions of this act taking such bonds at par as provided in an act entitled "An act to enable the several counties of the State to fund their floating indebtedness," approved February the twenty-first, 1881.

JOHN N. LEIGHTON.
C. E. CROOKS.
H. G. TINGUELY.
J. R. PARKS.
F. C. JOHNSON.
JAMES P. KELLY.
GEORGE YULE.
AARON HEIMS.
SAM. G. GILL.
S. RICHARDSON.
E. C. REID.
CHAS. SHACKLEFORD.
W. F. McINTYRE.
WM. H. ENDUER.
N. WEINBERGER.
GEORGE SIMMONDS.
J. W. MULLEN.
C. W. SHORES.
FRED. BROCKLEHURST.
137 LOUDEN MULLEN.
I. J. HARTMAN.
A. W. PICKERING.
THORNTON H. THOMAS.
MARTIN FLORIDA.
FRED. J. LEONARD.
M. M. JONES, JR.
G. N. MOSES.
FRANK A. ROOT.
J. A. PRESTON.
GUSTAV LEVI.
GEO. W. STEWART.
J. R. HINKLE.
MARK COPPINGER.
DAVID SMITH.
C. D. GAGE.
D. WOOD.
C. M. McCONNELL.
E. P. SHOVE.
C. H. RICKERT.
E. SCHLUTER.
E. T. GUNTER.
SPRIGG SHACKLEFORD.
M. RUSH WARNER.
C. W. SANBORN.
F. E. BIEBEL.
AUGUST BIEBEL.
JOS. TANNEY.
D. S. HYMAN.
MOSES G. BLOCH.
NORMAN MACKINTOSH.
S. M. DAVIS.
W. A. AREY.
M. S. WALLER.
J. H. GREEN.
J. H. BIXBY.
L. YURMAN (?).
A. J. ROBINSON.
JAMES RILEY.
JAS. H. MEYERS.
C. F. HART.
AUG. J. SPENGEL.
FRANK C. SMITH.
R. M. GARNETT.

Filed Aug. 21, 1882.

A. J. BEAN, *Clerk.*

And whereas in accordance with such petition and in pursuance of the act therein mentioned, public notice was duly given to warrant-holders for the period of thirty days by publication in the Gunnison News-Democrat a daily newspaper published within said Gunnison county in language as follows, to wit:

Funding county debt.

Notice to Warrant-holders.

Notice is hereby given to all persons that a petition signed by fifty qualified electors of Gunnison county, Colorado, who have paid taxes upon property assessed to them in said county in the year 1881, has been presented to the board of county commissioners to publish for the period of thirty days in a newspaper published within said Gunnison county a notice requesting the holders of the warrants of said county to submit in writing to the said board of county commissioners within thirty days from the date of the first publication of such notice a statement of the amount of warrants of said county which they will exchange at par and accrued interest for the bonds of said county to be issued under the provisions of an act entitled An act to enable the several counties of the State to fund their floating indebtedness approved by the General Assembly of the State of Colorado, February 21st 1881, taking such bonds at par.

And upon the hearing and examination of said petition the said board of county commissioners orders that this notice be given, and published as provided by section one of said act, and all persons holding warrants of said county issued prior to the first pub-
138 lication of this notice are hereby requested to submit in writing to the said board of county commissioners within thirty days from the date of the first publication of this notice a statement of the amount of the warrants of said county which they will exchange at par and accrued interest for the bonds of said county to be issued under the provisions of the act of the General Assembly above mentioned taking such bonds at par.

E. C. TEACHOUT,
JOHN SWEENEY,
CHARLES BIEBEL,
Board of County Commissioners, Gunnison County, Colorado.

Attest: A. J. BEAN,
Clerk of Board of County Commissioners.

And whereas, in response thereto statements in writing were submitted to the board of county commissioners by the holders of the warrants of said Gunnison county to the effect that they would exchange such warrants at par and interest for the bonds of said county, to be issued under the provisions of the act mentioned, taking such bonds at par.

And whereas on the 5- day of October, A. D. 1882, a further petition signed by fifty qualified electors of the county of Gunnison,

Colorado, who had paid taxes on property assessed to them in said county in the year 1881, was presented to the Board of County Commissioners of said County of Gunnison in language as follows, to wit:

To the honorable the Board of County Commissioners of the County of Gunnison, State of Colorado:

The undersigned your petitioners respectfully represent to your honorable body that they are electors of said county and have paid taxes on property assessed to them in said county during the preceding year; that the said county has a floating debt exceeding ten thousand dollars and that the interests of the county require that the said floating indebtedness be funded.

Wherefore we respectfully petition your honorable body to submit to the vote of the qualified electors of said county of Gunnison who shall have paid taxes on property assessed to them in the said county in the preceding year at the next general election the question whether your said Board of County Commissioners of Gunnison County shall issue bonds of said county under the provisions of the act entitled "An act to enable the several counties of the State to fund their floating indebtedness" approved February 21, 1881, in exchange at par for the warrants of said county issued
139 prior to the date of the first publication of the notice specified and provided for in section one of said act.

And your petitioners will ever pray.

F. C. JOHNSON.	HENRY A. TIDD.
C. W. SANBORN.	GEO. W. PETTIT.
CHAS. G. TINGUELY.	C. P. JESSUP.
C. W. SHORES.	J. J. SHAFER.
I. J. HARTMAN.	N. WEINBERGER.
M. RUSH WARNER.	D. S. HYMAN.
FRANK A. ROOT.	L. LINDANER.
MARK COPPINGER.	PHILIP L. GOLDSTEIN.
E. P. SHROVE.	JNO. A. CLEAY.
JOHN P. HARLOW.	SPLANE BROS.
AARON HEINS.	E. ALLISON.
SAM. G. GILL.	W. B. OWEN.
S. RICHARDSON.	J. KELENEL.
J. A. PRESTON.	M. E. CALLAHAN.
C. E. CROOKS.	SPRIGG SHACKLEFORD.
A. T. BLACKLY.	L. A. DUNHAM.
W. H. ENGLISH.	W. F. McINTYRE.
J. A. STEPHENS.	C. E. TREADWELL.
D. R. PECK.	F. J. LEONARD.
F. D. STEELE.	T. J. MALONEY.
O. P. ABERCROMBIE.	E. SCHLUTER, JR.
E. W. BURTON.	A. J. SPENGEL.
G. N. MOSES.	C. R. BURDETTE.
G. W. STEELE.	CHAS. SHACKLEFORD.
M. M. JONES, JR.	A. K. STEVENS.
J. R. HINKLE.	E. P. O'CONNOR.

M. S. WALLER.	F. E. BIEBEL.
C. W. ROOD.	E. T. GUNTER.
H. POMEROY.	C. S. ROBBINS.
DAVID SMITH.	H. R. HAMMOND.
C. H. RICKERT.	C. P. HOYT.
S. M. DAVIS.	R. O. WILMONT.
JAMES RILEY.	G. H. LANDO.
G. W. STEWART.	J. C. PENNINGTON.
W. H. ODELL.	B. H. BIRD.
H. L. KARR.	W. A. AREY.
C. EUBANK.	G. E. SPROUT.
WM. VOGEL.	O. P. ABERCROMBIE.
GEO. RILEY.	CHAS. YOUNGMAN.
J. H. FESLER.	A. J. ROBINSON.
N. JENNINGS, M. D.	C. F. DUNBAR.
WM. D. BECKETT.	

Filed Oct. 5, 1882.

A. J. BEAN, *Clerk.*

140 And whereas in accordance with said last-named petition and in pursuance of the provisions of the act aforesaid public notice was duly given for the period of thirty days by publication in the Gunnison News-Demorcrat, a daily newspaper published within said county of Gunnison that at the general election occurring on Tuesday the seventh day of November A. D. 1882, such question of funding the county indebtedness would be submitted to the vote of the duly qualified electors of said Gunnison county who had paid taxes upon property assessed to them in said county in the preceding year the said notice being as follows to wit:

Funding County Debt.

Notice is hereby given that under the provisions of an act entitled "An act entitled an act to enable the several counties of the State to fund their floating indebtedness" approved by the General Assembly of the State of Colorado February 21st 1881, a petition of fifty qualified electors of the county of Gunnison in said State who had paid taxes upon property assessed to them in said county in the preceding year (A. D. 1881), was presented to the county commissioners of said county on the 21st day of August A. D. 1882, praying the said county commissioners to publish for the period of thirty days in a newspaper published within said county a notice requesting the holders of the warrants of said county to submit in writing to the board of county commissioners of said county within thirty days from the date of the first publication of such notice a statement of the amount of warrants of said county which they would exchange at par and accrued interest for the bonds of said county to be issued under the provisions of said act, taking such bonds at par. The said notice has been by the board of county commissioners of said county duly given and published in accord-

ance with the prayer of said petition and in accordance with the provisions of said act of the General Assembly. That on this day to wit the 5th day of October A. D. 1882 and after the completion of the publication of the above-mentioned notice a petition of fifty of the duly qualified electors of said county who have paid taxes upon property assessed to them in said county in the preceding year (A. D. 1881), has been presented to the board of county commissioners of said county praying said board to submit to the vote of the qualified electors of said county who shall have paid taxes on property assessed to them in said county in the preceding year (A. D. 1881), at the next general election, the question whether the board of county commissioners of said county shall issue bonds of said county under the provisions of said act of the General Assembly in exchange at par
141 for the warrants of said county issued prior to the date of the first publication of the above-mentioned notice. And notice is therefore hereby given that pursuant to the prayer of said last-mentioned petition, and pursuant to the provisions of said act of the General Assembly in the premises at the next general election to be held on the Tuesday succeeding the first Monday of November, A. D. 1892, the same being the seventh day of said month there will be submitted in accordance with the provisions of said act of the General Assembly to the vote of the qualified electors of said Gunnison county who shall have paid taxes on property assessed to them in said county in the preceding year (A. D. 1881), the question whether the board of county commissioners of said county (—) under the provisions of said act in exchange at par for the warrants of said county issued prior to the 4th day of September A. D. 1882 said day being the day on which the first publication was made of the notice heretofore given as hereinbefore mentioned.

Notice is further hereby given that under the provisions of said act the county treasurer of said county will make out and cause to be delivered to the judges of election in each election precinct in said county prior to the said election a certified list of the tax-payers in said county who shall have paid taxes upon property assessed to them in said county in the preceding year (A. D. 1881) and no person can vote upon the said question of the funding of the county indebtedness unless his name shall appear upon such list nor unless he shall have (*have*) paid all county taxes assessed against him in said county in the preceding year (A. D. 1881).

By order of the Board of County Commissioners of said Gunnison County.

Gunnison, Colo., October 5th, 1882.

E. C. TEACHOUT,
President of the Board.

A. J. BEAN,
County Clerk and Recorder and Clerk of Board.

Affidavit of Publication.

STATE OF COLORADO, }
County of Gunnison, } ss:

I, F. P. Tanner of said county of Gunnison do solemnly swear that I am the manager of the News-Democrat a newspaper printed and published in Gunnison in said county and State. And I further swear that the notice of which the annexed is a true copy has been published in said newspaper for thirty successive issues of the daily issue of said paper and twenty-six times — and that the first publication of said notice was in said paper bearing date the
142 7th day of October A. D. 1882, and the last publication of said notice was in said paper bearing date the seventh day of November, A. D. 1882.

F. P. TANNER, *Manager.*

Subscribed and sworn to before me this 1st day of December, A. D. 1882.

[NOTARIAL SEAL.] WM. D. BECKETT,
Notary Public.

Publisher's fees, —.

And whereas in pursuance of said notice the question of funding the county indebtedness was duly submitted to the vote of the duly qualified electors of said Gunnison county at the said general election which occurred on Tuesday November 7th A. D. 1882.

And whereas the county treasurer of Gunnison county made out and caused to be delivered to the judges of election in each election precinct in the county prior to the said election a certified list of the tax-payers in said Gunnison county who have paid taxes upon property assessed to them in said county in the preceding year and no person was allowed to vote upon the question of the funding of the county indebtedness at such election unless his name appeared upon such list nor unless it was found he had paid all county taxes assessed against him in said county in the preceding year.

And whereas all persons voting on the question at such election voted by separate ballot which was deposited in a box used for that purpose only and on which ballot were printed the words "for funding county debt" or "against funding county debt."

And whereas each ballot was numbered in the order (*it*) which it was received and the number was duly recorded on the list of votes opposite the name of the voter who presented the ballot.

And whereas the judges of election duly made out and certified to the clerk of the county a separate list of the names of the electors voting upon the question of the funding of the county indebtedness in the order in which the ballot of the elector so voting was received.

And whereas the vote on the question was duly canvassed in the same manner as the vote for county officers and it appeared from such canvass that a majority of the electors voting upon the ques-

tion voted in favor of funding the county indebtedness; the certificate of the county board of canvassers being in words and figures following, viz.:

This is to certify that we, A. J. Bean, county clerk and recorder of Gunnison county in the State of Colorado, and William
143 H. Wadsworth and Milo T. Sipe two justices of the peace within and for said Gunnison county constituting the county board of canvassers of said county legally assembled for the purpose of canvassing the returns of the general election held on the seventh day of November, A. D. 1882, have canvassed the returns from the various election precincts in our said county and from such returns duly and legally canvassed by us we find the fact to be and hereby declare the same as the result of our canvass of the vote upon the proposition submitted under the provisions of an act entitled "An act to enable the several counties of the State to fund their floating indebtedness" approved by the General Assembly of the State of Colorado, on February 21st, 1881, to the electors of our said county who were qualified to vote upon the same, viz: Whether the floating indebtedness of our said county existing prior to the second day of September, 1882, should be funded as provided in said act of the General Assembly there were cast at said election in our said county by persons entitled to vote upon said question two hundred and seventy-seven votes "for funding county debt" and ten votes "against funding county debt." And we further certify and declare the result of said election to be that the proposition to fund the floating indebtedness of said Gunnison county as aforesaid under the provisions of said act of the General Assembly was duly adopted at said election.

In testimony whereof we have caused this certificate to be signed by the county clerk of said county and have caused the seal of said county of Gunnison the official seal of our said county clerk to be hereunto affixed on this the 17th day of November A. D. 1882.

[Gunnison County Seal.]

A. J. BEAN, *County Clerk.*
W. H. WADSWORTH, *J. P.* [SEAL.]
MILO T. SIPE, *J. P.* [SEAL.]

Filed Nov. 18, 1882.

A. J. BEAN, *Clerk.*

Now therefore, it is hereby declared that the sum of the floating indebtedness of the said county of Gunnison amounted to one hundred and seventy-four thousand one hundred and fifteen and $\frac{29}{100}$ dollars ($174,115.29/100) on the date of the first publication of the notice to warrant-holders that is to say on the second day of September A. D. 1882.

And it is therefore ordered that this board of county commissioners issue coupon bonds of Gunnison county to the amount of one hundred and seventy-four thousand one hundred and fifteen and $\frac{29}{100}$ dollars, said bonds to be dated December first, 1882,
144 to be payable at the pleasure of the county after ten years

from the date of issue and absolutely due and payable twenty years after such date at the office of the treasurer of said Gunnison county, in the city of Gunnison, such bonds to bear interest at the rate of eight per cent. per annum payable semi-annually on the first day of March and the first day of September in each year at the Chase national bank in the city of New York or at the office of the county treasurer of Gunnison county in the city of Gunnison at the option of the holder. The said bonds shall be divided into three series designated "A," "B" and "C" respectively.

Series "A" shall consist of one hundred and sixty (160) bonds for the sum of one thousand dollars each to be numbered from No. 1 to No. 160 both numbers inclusive.

Series "B" to consist of sixteen (16) bonds for the sum of five hundred dollars each to be numbered from No. 161 to No. 176 both numbers inclusive and series "C" to consist of sixty-two (62) bonds for the sum of one hundred dollars each to be numbered from No. 177 to No. 238 both numbers inclusive.

The said bonds shall be signed by the chairman of the board of county commissioners, countersigned by the county treasurer and attested by the county clerk of Gunnison county who shall stamp the seal of said county upon each bond. Each bond shall state upon its face to whom it is issued and shall be registered in a book kept for that purpose by the county treasurer.

The form of such bonds and the coupons thereto attached shall be as follows:

No. —. $—.

UNITED STATES OF AMERICA, *County of Gunnison, State of Colorado.*

Funding Bond.

The County of Gunnison in the State of Colorado acknowledges itself indebted and promises to pay to —— —— or bearer — dollars lawful money of the United States for value received redeemable at the pleasure of said county after ten years and absolutely due and payable twenty years from the date hereof at the office of the treasurer of said county in the city of Gunnison with interest thereon at the rate of eight per cent. per annum payable semi-annually on the first day of March and the first day of September in each year at the office of the county treasurer aforesaid or at —— in the city of New York at the option of the holder upon the presentation and surrender of the annexed coupons as they severally become due.

145 This bond is issued by the Board of County Commissioners of said Gunnison County in exchange at par for valid floating indebtedness of the said county outstanding prior to September 1st, 1882, under and by virtue of and in full conformity with the provisions of an act of the General Assembly of the State of Colorado entitled "An act to enable the several counties of the State to fund their floating indebtedness," approved February 21, 1881; and it is

hereby certified that all the requirements of law have been fully complied with by the proper officers in the issuing of this bond. It is further certified that the total amount of this issue does not exceed the limit prescribed by the constitution of the State of Colorado, and that this issue of bonds has been authorized by a vote of a majority of the duly qualified electors of the said county of Gunnison voting on the question at a general election duly held in said county on the seventh day of November, A. D. 1882.

The bonds of this issue are comprised in three series, designated "A," "B," and "C" respectively, the bonds of series "A" being for the sum of one thousand dollars each, those of series "B" for the sum of five hundred dollars each and those of series "C" for the sum of one hundred dollars each.

The faith and credit of the county of Gunnison are hereby pledged for the punctual payment of the principal and interest of this bond.

In testimony whereof the Board of County Commissioners of said County of Gunnison has caused this bond to be signed by its chairman, countersigned by the county treasurer and attested by the county clerk under the seal of the county this first day of December, A. D. 1882.

[COUNTY SEAL.]

—— ——,
Chairman Board of County Commissioners.

Countersigned:

—— ——,
County Treasurer.

Attest: —— ——,
County Clerk.

Over.

$—. *Form of Coupon.* $—.

The County of Gunnison, in the State of Colorado,

Will pay the bearer — dollars, at the office of the county treasurer, in the city of Gunnison, or at the ——, in the city of New York, on the first day of March, 188–, being six months' interest on funding bond.

No. — (series "—").

—— ——,
County Treasurer.

146 On or after the second day of December, A. D. 1882, the county treasurer shall issue such bonds to any person or corporation presenting any Gunnison County warrants issued prior to the first day of September, A. D. 1882, in exchange for such warrants, taking such warrants at their face value with accrued interest added up to the first day of December, A. D. 1882, and issuing the bonds in exchange for the same at par.

Attest: A. J. BEAN, *Co. Clerk.*

STATE OF COLORADO, } ss:
Gunnison County, }

I, Sam. P. Spencer, county clerk within and for the county of Gunnison in the State of Colorado, do hereby certify the above and foregoing to be a true and correct copy of the orders made and entered by the Board of County Commissioners of said Gunnison County in relation to the funding of the county debt on August 21, 1882, October 5th, 1882, and November 18th, 1882, as the same now appear of record in County Commissioners' Record 2, at pages 78, 86, and 102, respectively, now in my office.

Witness my hand (—) the seal of said Gunnison county, at my office, in the town of Gunnison, Colorado, this 28th day of May, A. D. 1894.

[SEAL.]

SAM. P. SPENCER, *County Clerk,*
By JOHN H. McCORMICK, *Deputy.*

EXHIBIT K.

Statement of County Warrants Cancelled December 1st, 1882, and Converted into Funding Bonds.

* Envelope No. 1.

Nos. 1 to 42, inclusive, of series "A," $1,000 each.....	42,000
181 to 192, inclusive, series "B," $500 each.....	6,000
201 to 219, " " "C," $100 "	1,900
Total.....	49,900

EXHIBIT K.

No.	When issued.	Interest.	Amount.	Total.
302	Jan. 6, 1881	11.45	102.25	
352	" " "	.23	2.50	
358	" " "	.26	2.50	
364	" " "	.26	2.50	
383	" " "	1.88	18.	
389	" " "	1.29	8.50	
390	" " "	2.20	14.50	
391	" " "	1.45	9.50	
392	" " "	2.20	14.50	
393	" " "	1.98	13.	
394	" " "	2.20	14.50	
395	" " "	2.20	14.50	
447	April, "	14.30	87.40	
450	" "	20.62	125.	
451	" "	20.62	125.	
477	" "	40.89	250.	
494	July, "	1.05	10.	
508	" "	.58	5.	
544	" "	2.92	25	
554	" "	.30	2.50	
567	" "	15.67	117.50	
568	" "	46.63	349.75	
574	" "	.37	3.50	
577	" "	3.40	30.	
603	Sept. 12, "	121.66	1,000.	

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[* In red ink in copy.]

		604	"	17,	"	60.27	500.
		608	Oct.,		"	14.51	125.
106	Forwarded					391.30	2,972.40
107	Forwarded					391.39	2,972.40
		610	Oct.,		1881	1.33	11.60
		611	"		"	1.33	11.60
		622	"		"	68.	600.
		626	"		"	.78	7.
		627	"		"	.73	6.50
		628	"		"	5.12	45.
		630	"		"	5.37	47.40
		633	"		"	106.53	940.
		634	"		"	1.57	16.33
		635	"		"	77.48	785.65
		637	"		"	1.47	13.20
		638	"		"	1.72	15.50
		648	"		"	9.30	96
		656	"		"	2.82	33.
		657	"		"	2.01	18.
		665	"		"	6.18	55.55
		666	"		"	10.87	95.95
		668	"		"	13.71	123.25
		671	"		"	4.20	38.40
		672	"		"	3.35	29.75
		681	"		"	21.43	192.50
		685	"		"	21.29	192.10
		687	Nov.	3,	"	64.67	600.
		688	"	12,	"	62.83	600.
		689	"	14,	"	171.71	1,726.60
		690	"		"	57.20	558.
		691	"		"	28.26	275.
		693	"		"	55.44	539.50
		694	"		"	13.78	134.40
		696	Dec.	2,	"	44.75	450.
		697	"	"	"	20.32	204.50
		698	"	"	"	32.32	325.15
		699	"	"	"	23.98	241.20
Road		47	Nov.	19,	"	16.96	165.
Gen'l		700	Dec.,		"	40.72	420.
		701	"	16,	"	4.66	48.70
	Forwarded					1,395.58	12,634.73
148	Forwarded					1,395.58	12,634.73
		702	Dec.	16,	1881	10.79	112.60
		703	"	"	"	47.75	484.50
		704	"	"	"	4.02	42.50
		705	"	"	"	37.47	410.
		707	"	20,	"	3.32	35.
		708	"	21,	"	1.88	20.
		709	"	24,	"	22.98	250.
		710	"	27,	"	11.56	125.
		711	"	"	"	11.59	125.
		712	"	28,	"	162.70	1,759.
		713	Jan'y	4,	1882	21.54	238.
		714	"	"	"	15.05	170.
		715	"	5,	"	67.91	750.
		716	"	"	"	5.21	57.50
		717	"	"	"	12.72	143.75
		718	"	6,	"	29.90	332.46
		719	"	"	"	69.60	771.01
		720	"	"	"	11.28	125.
		723	"	"	"	101.57	1,125.31
		724	"	"	"	3.25	36.15
		727	"	9,	"	40.26	451.72

	728	"	"	"	4.47	50.
	729	"	"	"	13.42	150.
	732	"	"	"	37.03	413.96
	733	"	10,	"	.40	4.90
	736	"	"	"	21.28	240.40
	737	"	"	"	4.42	50.
	738	"	"	"	42.10	475.10
	739	"	"	"	4.79	54.
	741	"	"	"	4.94	55.85
	742	"	"	"	128.54	1,451.
	746	"	"	"	3.85	45.
	747	"	"	"	6.84	81.85
	750	"	"	"	19.28	221.21
	755	"	"	"	3.75	42.50
108	Forwarded.....				2,383.08	23,535.00
109	Forwarded.....				2,383.08	23,535.
	758	Jan'y	10,	1882	2.65	30.
	760	"	"	"	2.65	30.
	762	"	"	"	8.85	100.
	765	"	"	"	2.39	28.
	772	"	"	"	14.47	163.50
	774	"	"	"	3.00	35.40
	776	"	"	"	6.18	73.
	779	"	"	"	3.97	46.
	780	"	"	"	4.77	54.
	785	"	"	"	5.43	62.
	786	"	"	"	2.54	30.
	787	"	"	"	1.91	21.50
	792	"	"	"	11.51	134.60
	793	"	"	"	8.02	92.25
	797	"	"	"	26.	294.70
	800	"	"	"	16.94	198.
	801	"	"	"	15.09	176.50
	814	"	"	"	1.13	13.
	815	"	"	"	1.14	13.
	816	"	"	"	1.13	13.
	817	"	"	"	1.13	13.
	818	"	"	"	1.13	13.
	819	"	"	"	1.13	13.
	820	"	"	"	1.13	13.
	821	"	"	"	1.13	13.
	822	"	"	"	1.13	13.
149	823	"	"	"	1.13	13.
	825	"	"	"	1.13	13.
	828	"	"	"	2.94	33.75
	832	"	11,	"	6.73	76.25
	839	"	"	"	1.41	16.15
	840	"	"	"	2.84	32.95
	842	"	12,	"	13.63	155.
	843	"	"	"	4.15	47.05
	845	"	"	"	2.54	30.
	848	"	"	"	1.10	12.50
	Forwarded.....				2,567.23	25,651.10
	Forwarded.....				2,567.23	25,651.10
	853	Jan'y	12,	1882	.92	10.60
	854	"	"	"	.92	10.60
	855	"	"	"	2.19	25.
	857	"	"	"	1.93	22.
	858	"	"	"	2.19	25.
	859	"	"	"	1.93	22.
	860	"	"	"	2.17	24.50
	861	"	"	"	2.17	24.50

		862	"	"	"	2.17	24.50
		863	"	"	"	2.15	24.50
		864	"	"	"	1.33	15.
		870	"	"	"	1.33	15.
		877	"	"	"	2.03	25.
		880	"	"	"	3.24	37.50
		887	"	"	"	2.39	27.20
		887	"	"	"	2.19	25.
		888	"	"	"	.43	5.20
		897	"	"	"	1.88	22.
		898	"	"	"	2.18	25.
		899	"	"	"	1.46	17.
		907	"	"	"	2.74	32.50
		911	"	"	"	1.36	.25
		912	"	"	"	.13	2.50
		918	"	"	"	1.94	22.50
		919	"	"	"	3.01	35.30
		928	"	"	"	2.64	.30
		933	"	"	"	1.10	12.50
		945	"	"	"	1.94	22.50
		946	"	"	"	7.25	82.50
		950	"	"	"	3.53	40.15
		951	"	"	"	17.50	200.
		962	"	"	"	2.65	30.
		963	"	"	"	9.32	105.50
		965	"	"	"	6.62	75.
		967	"	"	"	1.32	.15.
110						2,667.48	26,809.15
111	Forwarded...					2,667.48	26,809.15
		970	Jan.	12,	1882	2.42	27.50
		974	"	"	"	.88	10.
		975	"	"	"	3.46	40.
		976	"	"	"	1.94	22.50
		977	"	"	"	2.59	30.
		984	"	"	"	3.02	35.
		986	"	"	"	1.08	12.50
		987	"	"	"	3.02	35.
		989	"	"	"	2.83	32.50
		994	"	"	"	6.71	77.50
		996	"	"	"	2.16	25.
		997	"	"	"	6.50	75.
		998	"	"	"	2.16	25.
		999	"	"	"	1.94	22.50
150		1000	"	"	"	1.94	22.50
		1001	"	"	"	1.30	15.
		1002	"	"	"	1.94	22.50
		1003	"	"	"	2.82	32.50
		1004	"	"	"	1.94	22.50
		1005	"	"	"	6.33	73.10
		1009	"	"	"	1.30	15.
		1010	"	"	"	4.33	50.
		1012	"	"	"	2.82	32.50
		1015	"	"	"	1.94	22.50
		1027	"	"	"	3.45	40.
		1032	"	"	"	3.10	35.60
		1045	"	"	"	2.25	26.
		1049	"	"	"	2.80	32.50
		1051	"	"	"	3.20	37.50
		1068	"	"	"	9.96	115.
		1069	"	"	"	20.36	235.
		1071	"	"	"	.87	10.
		1073	"	"	"	2.62	35.
		1092	"	"	"	.93	12.50
		1111	"	"	"	.54	10.
						2,784.93	28,176.35

		Forwarded.....				2,784.93	28,176.35
		1113	Jan'y	12,	1882	.83	12.50
		1153	"	"	"	.40	6.
		1181	"	"	"	1.50	17.50
		1182	"	"	"	.85	10.
		1211	"	14,	"	1.69	20.
		1215	"	"	"	7.08	83.20
		1218	"	"	"	6.75	80.25
		1219	"	"	"	3.85	46.40
		1225	"	"	"	2.18	25.60
		1235	"	25,	"	8.32	98.50
		1236	"	31,	"	46.63	559.50
		1237	"	"	"	12.46	150.
		1239	Feb'y	4,	"	12.25	150.
		1241	"	"	"	22.83	279.75
		1248	"	13,	"	6.40	85.
		1250	"	20,	"	13.95	186.10
		1252	"	21,	"	19.50	260.
		1253	March	1,	"	14.97	201.
		1254	"	"	"	46.56	621.50
		1255	"	"	"	45.51	609.20
		1258	"	"	"	29.88	400.
		1261	"	7,	"	44.55	610.
		1263	April	3,	"	8.02	125.
		1264	"	"	"	8.23	125.
		1265	"	"	"	8 02	125.
		1268	"	5,	"	35.18	548.50
		1269	"	"	"	19.59	300.10
		1270	"	"	"	8.02	125.
		1273	"	7,	"	19.30	301.
		1284	"	"	"	7.80	121.50
		1327	"	"	"	.10	2.
		1328	"	"	"	.13	2.50
		1329	"	"	"	.10	2.00
		1337	"	"	"	9.94	155.
	112	Forwarded.....				3,258.30	34,620.95
151	113	Forwarded.....				3,258.30	34,620.95
		1341	April	7,	1882	.65	12.
		1345	"	"	"	.65	12.
		1373	"	"	"	4.46	69.
		1374	"	"	"	12.94	200.
		1375	"	"	"	25.66	400.
		1391	"	"	"	16.03	250.
		1444	May	1,	"	7.96	147.
		1445	"	8,	"	35.64	658.
		1447	"	15,	"	6.25	115.50
		1453	June	1,	"	10.15	204.20
		1454	"	1,	"	19.39	390.
		1455	"	1,	"	31.15	626.30
		1480	July	7,	"	9.17	280.
		1503	"	8,	"	2.53	69.
		1523	"	"	"	.37	10.
		1524	"	"	"	1.11	30.
		1535	"	"	"	.23	6.
		1543	"	"	"	.16	12.
		1558	"	"	"	.68	18.25
		1559	"	"	"	3.11	94.20
		1572	"	"	"	.16	5.
		1573	"	"	"	.34	10.
		1574	"	"	"	.08	2.50
		1638	"	10,	"	11.67	300.
		1664	"	14,	"	5.66	169.80
		1668	"	"	"	2.64	70.
		1669	"	"	"	13.40	355.

		1670	"	"	"	.94	25.
		1671	"	"	"	.84	22.50
		1672	"	"	"	.94	25.
		1677	"	"	"	1.46	38.80
		1678	"	"	"	1.09	28.90
		1679	"	"	"	1.33	35.50
		1680	"	"	"	1.16	30.90
		1683	"	"	"	1.35	35.90
	Forwarded.....					3,489.65	39,379.20
	Forwarded.....					3,489.65	39,379.20
		1684	July	14,	1882	.76	20.
		1685				.66	17.50
		1686				.94	25.
		1689				.94	25.
		1691				.90	24.
		1693				1.00	26.50
		1696				.90	24.
		1697				1.00	26.50
		1700				1.11	29.70
		1702				.97	26.10
		1706				.37	10.
		1716				.97	26.10
		1717				1.00	26.50
		1718				1.45	38.50
		1719				1.00	26.50
		1721				1.00	26.50
		1722				1.00	26.50
		1723				1.00	26.50
		1725				.90	24.
		1726				1.00	26.50
		1727				1.00	26.50
		1728				1.	26.50
		1729				1.	26.50
		1730				1.	26.50
		1731				.79	21.
		1732				.88	23.50
152		1736				1.41	37.50
		1757				.47	12.70
		1763				4.53	120.
		1769				.16	5.
		1776				.42	12.
		1777				1.33	42.
		1780				2.28	70.
		1785				1.29	35.
		1791				1.06	30.
114						3,527.14	40,395.80
115	Forwarded.....					3,527.14	40,395.80
		1799	July	14,	1882	2.33	70.
		1800	"	"	"	1.58	50.
		1802	"	"	"	2.41	76.50
		1883	"	15,	"	.37	10.
		1808	"	14,	"	1.77	47.70
		1827	"	"	"	32.95	957.
		1828	"	"	"	3.71	98.95
		1875	"	"	"	10.76	312.50
		1879	"	15,	"	85.93	2,274.70
		1889	"	19,	"	21.29	618.40
		1894	"	"	"	2.06	59.
		1895	"	"	"	1.20	37 50
		1901	"	"	"	7.56	209.40
		1904	"	"	"	3.40	107.95
		1906	"	"	"	1.26	40.

		1912	"	"	"	7.29	210.05	
		1914	"	31,	"	8.18	250.	
Road		149	Aug.	15,	"	2.78	333.26	
Gen'l		1967	Sept.	1,	"	.25	13.15	
						3,724.22	46,171.86	49,896.08

Bonds, series "A," Nos. 43 to 66, inclusive, 24 bonds, $1,000 each . . . . $24,000.
Series "C," Nos. 223 to 228, 6 bonds, $100 each . . . . . 600.

Total . . . . . $24,600.

		No. 3.*	120	July	21, 1879	33.58	100.	
			255	Jan.	6, 1881	.86	10.	
			794	"	10, 1882	.02	5.	
			1147	"	12, "	.41	15.50	
			1159	"	" "	.05	2.50	
			1184	"	" "	.04	10.	
			1187	"	" "	.20	7.50	
			1338	April	7, "	.22	8.	
			1396	"	" "	.05	2.50	
			1397	"	" "	.05	2.50	
			1465	July	3, "	3.41	125.	
			1506	"	8, "	.17	6.20	
			1527	"	" "	.06	2.50	
			1531	"	" "	6.47	253.	
			1537	"	" "	.29	12.	
			1542	"	" "	.04	12.	
			1552	"	" "	.42	16.	
			1560	"	" "	1.59	83.	
			1578	"	" "	.61	26.50	
			1581	"	" "	.14	5.	
	116					48.68	704.70	
153	117	Forwarded.				48.68	704.70	
			1593	July	8, 1882	.65	24.40	
			1609	"	" "	.78	22.50	
			1631	"	10, "	7.67	200.	
			1648	"	13, "	9.52	250.	
			1649	"	" "	9.52	250.	
			1650	"	" "	9.52	250.	
			1651	"	" "	9.52	250.	
			1652	"	" "	9.52	250.	
			1653	"	" "	9.52	250.	
			1663	"	" "	1.05	30.	
			1667	"	14, "	15.42	408.	
Road		89	"	"	"	8.72	320.25	
Gen'l		1773	"	"	"	.25	13.30	
		1774	"	"	"	.06	2.70	
		1775	"	"	"	.69	25.	
		1781	"	"	"	.47	17.20	
		1792	"	"	"	.41	15.	
		1797	"	"	"	.54	23.50	
		1818	"	"	"	.06	2.50	
		1820	"	"	"	.06	2.50	
		1822	"	"	"	.36	9.60	
		1831	"	"	"	.60	17.50	
		1851	"	"	"	.53	14.50	
		1869	"	"	"	.60	17.40	
		1871	"	"	"	.91	26.10	
		1872	"	"	"	.91	26.10	
		1873	"	"	"	.91	26.10	
		1880	"	15,	"	1.12	31.55	

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		1887	"	18,	"	1.25	46.35
Road	100	"	"	19,	"	1.20	34.20
Gen'l	1898	"	"	20,	"	6.80	250.
	1903	"	"	19,	"	.27	10.60
	1907	"	"	"	"	2.53	94.60
	1910	"	"	"	"	.70	26.10
	1916	"	"	31,	"	1.41	55.
	1917	Aug.		7,	"	9.60	320.40
	Forwarded					172 33	4,317.65
	Forwarded					172.33	4,317.65
	1920	August		7,	1882	4.98	183.25
Road	111	"		8,	"	.26	10.
	112	"		"	"	.22	8.
	113	"		"	"	1.23	45.
	114	"		"	"	.11	4.
Gen'l	1925	"		14,	"	19.33	710.
	1926	"		15,	"	1.43	53.90
	1927	"		"	"	.40	21.
Road	151	"		"	"	1.99	73.50
	152	"		"	"	1.05	54.
Gen'l	1929	"		19,	"	24.07	883.75
	1931	"		"	"	4.77	175.
	1932	"		"	"	8.58	315.
	1934	"		21,	"	6.80	250.
	1935	"		"	"	6.80	250.
	1936	"		"	"	6.80	250.
	1937	"		"	"	6.80	250.
	1940	"		28,	"	.63	28.
Road	162	"		"	"	13.14	514.
	164	"		"	"	4.69	183.25
154	167	Sept.		1,	"	29.68	1,319.50
	168	"		"	"	.83	42.80
	169	"		"	"	20.58	950.
	171	"		"	"	.11	6.
	172	"		"	"	.28	14.65
	173	"		"	"	43.33	2,000.
	174	"		"	"	86.67	4,000.
	175	"		"	"	65.	3,000.
	177	"		"	"	19.55	1,020.40
Gen'l	1943	"		"	"	.79	33.25
	1946	"		"	"	.04	2.50
	1949	"		"	"	.05	15.80
	1952	"		"	"	5.09	213.47
	1955	"		"	"	10.70	453.
	1958	"		"	"	.15	33.40
118	Forwarded					569.26	21,684.07
119	Forwarded					569.26	21,684.07
	1961	Sept.		1,	1882	5.24	221.75
	1964	"		"	"	2.77	166.55
	1965	"		"	"	9.45	400.
	1974	"		"	"	.18	10.90
	1977	"		"	"	.15	33.30
	1985	"		"	"	.04	2.
	1986	"		"	"	7.58	321.15
	1987	"		"	"	13.64	577.75
	1988	"		"	"	3.02	127.85
	1990	"		"	"	4.46	189.30
	1991	"		"	"	1.05	60.
Road	192	"		15,	"	2.42	1.26
	Totals					619.26	23,920.62	24,539.88

Bonds Nos. 95 to 117, series "A," and No. 240, series "C,"
23 bonds of $1,000 each..... 23,000.
1 bond of 100..... 100.
23,100.

		No.					
		99	Oct.,		1880	3.70	24.70
		146	"		"	1.45	10.05
		157	"		"	6.21	46.30
		* 214	Jan'y	3,	1881	.72	5.
		251	"	6,	"	2.55	17.50
		271	"	"	"	1.45	10.
		274	"	"	"	1.45	10.
		281		"	"	1.55	10.
		282		"	"	1.55	10.
		338		"	"	5.	34.50
		343		"	"	.62	4.
		362		"	"	.39	2.50
		363		"	"	.39	2.50
		405		"	"	.48	5.60
		407		"	"	.75	5.
		435		13,	"		2.50
		454	April,		"	1.55	10.
		471	"		"	5.15	35.
		478	May	2,	"	24.50	157.50
		532	July,		"	.76	6.50
		552	"		"	80.70	593.80
		564	"		"	40.	355.10
		565	"		"	2.88	25.
		580	"		"	1.26	12.
		607	October,		"	33.05	286.
		609	"		"	14.41	125.
		612	"		"	14.41	125.
155		613	"		"	138.33	1,200.
		617	"		"	11.50	100.
		618	"		"	7.50	65.35
		619	"		"	46.48	404.25
		620	"		"	24.26	211.
		621	"		"	14.67	128.
	128	Forwarded.....				489.69	4,039.65
	129	Forwarded.....				489.67	4,039.65
		623	October,		1881	3.96	34.85
		625	"		"	10.83	95.
		631	"		"	18.43	163.
		632	"		"	9.11	80.
		640	"		"	28.89	255.55
		641	"		"	14.19	125.50
		643	"		"	9.61	85.40
		644	"		"	11.33	100.
		645	"		"	18.49	163.60
		646	"		"	13.40	118.
		647	"		"	7.48	66.
		649	"		"	3.71	33.
		651	"		"	23.28	207.
		652	"		"	6.25	55.30
		655	"		"	5.57	49.60
		660	"		"	12.37	110.50
		662	"		"	.58	5.35
		663	"		"	2.48	22.50
		682	"		"	65.47	582.
		683	"		"	335.	3,000.
Road.....		37	"		"	10.03	87.
		38	"		"	3.88	33.75

[* In red ink in copy.]

		39	"		"	20.10	165.
Gen'l		721	Jan.	6,	1882	45.	500.
		726	"	9,	"	26.65	304.30
		734	"	10,	"	12.95	148.
		748	"	"	"	15.35	176.15
		753	"	"	"	1.30	15.
		757	"	"	"	2.12	25.
		761	"	"	"	4.40	50.
		768	"	"	"	7.90	90.
		770	"	"	"	17.70	205.60
		771	"	"	"	1.18	15.30
		778	"	"	"	3.45	40.
		781	"	"	"	3.85	50.
		789	"	"	"	.45	5.50
	Forwarded					1,266.41	11,312.40
	Forwarded					1,266.41	11,312.40
		806	Jan.	10,	1882	4.30	50.
		813	"	"	"	8.20	94.25
		826	"	"	"	4.30	50.
156		827	"	"	"	2.20	25.
		836	"	11,	"	2.15	24.90
		872	"	12,	"	1.30	14.90
		873	"	"	"	.74	8.50
		875	"	"	"	3.05	35.
		876	"	"	"	.65	7.50
		883	"	"	"	.22	2.50
		890	"	"	"	.22	2.50
		908	"	"	"	2.51	30.
		909	"	"	"	5.87	70.
		924	"	"	"	.18	2.50
		932	"	"	"	.39	5.00
		935	"	"	"	.17	5.00
		942	"	"	"	.42	5.00
		958	"	"	"	3.72	42.50
		978	"	"	"	.21	2.50
		979	"	"	"	.21	2.50
		980	"	"	"	.21	2.50
		981	"	"	"	.21	2.50
		982	"	"	"	7.20	82.50
		985	"	"	"	.21	2.50
		1017	"	"	"	.21	2.50
		1025	"	"	"	3.08	35.
		1026	"	"	"	3.08	35.60
		1060	"	"	"	.65	7.50
		1066	"	"	"	15.65	170.
		1067	"	"	"	12.90	150.
		1070	"	"	"	9.46	110.
		1078	"	"	"	1.08	12.50
		1080	"	"	"	.04	5.
		1123	"	"	"	.02	2.50
		1128	"	"	"	.43	5.
130	Forwarded					1,361.85	12,418.05
131	Forwarded					1,361.85	12,418.05
		1130	Jan'y	12,	1882	1.70	20.
		1131	"	"	"	1.70	20.
		1132	"	"	"	.25	3.
		1133	"	"	"	.52	6.
		1135	"	"	"	.73	10.
		1139	"	"	"	.20	2.50
		1151	"	"	"	.15	2.50

No. 8.*

[* In red ink in copy.]

	1152	"	"	"	.73	10.
	1154	"	"	"	.73	10.
	1160	"	"	"	.43	5.
	1167	"	"	"	.87	10.
	1168	"	"	"	.75	10.
	1173	"	"	"	1.05	12.
	1174	"	"	"	.20	2.50
	1177	"	"	"	.....	7.50
	1180	"	"	"	.21	2.50
	1185	"	"	"	.....	2.50
	1200	"	"	"	16.90	196.36
	1204	"	"	"	16.	183.75
Road	53	"	"	"	45.39	514.
	54	"	13,	"	9.48	108.
	58	"	"	"	6.40	77.
Gen'l	1221	"	14,	"	2.70	35.
	1226	"	"	"	.40	5.
	1238	"	31,	"	16.95	208.
	1242	Feb'y	4,	"	5.55	68.25
	1244	"	9,	"	29.	352.95
	1256	March	1,	"	1.70	23.
	1260	"	7,	"	14.55	200.50
Road	66	April	5,	"	.25	4.
Gen'l	1330	"	7,	"	. . . .	2.50
	1333	"	"	"	.....	5.
157	1346	"	"	"	.....	10.
	1358	"	"	"	5.90	100.
	1359	"	"	"	5.90	100.
	1360	"	"	"	5.90	100.
Forwarded					1,555.04	14,847.36
Forwarded					1,555.04	14,847.36
	1361	April	7,	1882	5.90	100.
	1362	"	"	"	5.90	100.
	1363	"	"	"	5.90	100.
	1364	"	"	"	5.90	100.
	1365	"	"	"	5.90	100.
	1366	"	"	"	5.90	100.
	1367	"	"	"	5.90	100.
	1368	"	"	"	5.90	100.
	1420	"	"	"	19.	5.
	1437	"	21,	"	36.70	607.45
	1473	July	3,	"	2.29	66.53
	1495	"	8,	"	.90	25.
	1498	"	"	"	.34	10.
	1507	"	"	"	2.93	96.10
	1519	"	"	"	.....	2.50
	1525	"	"	"	.86	36.
No. 8*	1530	"	"	"	.22	6.20
	1539	"	"	"	.43	12.50
	1557	"	"	"	.14	4.20
	1561	"	"	"	1.42	59.
	1569	"	"	"	.56	21.50
	1580	"	"	"	.66	26.50
	1591	"	"	"	.87	26.10
	1582	"	"	"	.88	26.50
	1596	"	"	"	.91	26.10
	1597	"	"	"	.29	7.50
	1601	"	"	"	.83	25.
	1611	"	"	"	.68	27.10
	1612	"	"	"	.20	5.
	1614	"	"	"	.....	2.50
	1654	"	13,	"	9.51	250.

[* In red ink in copy.]

		1673	"	14,	"	.09	2.50
		1674	"	"	"	.09	2.50
		1675	"	"	"	.09	2.50
		1676	"	"	"	.19	5.00
132	Forwarded.....					1,664.51	17,034.14
133	Forwarded.....					1,664.51	17,034.14
		1681	July	14,	1882	.19	5.
		1682	"	"	"	.19	5.
		1687	"	"	"	.10	2.70
		1688	"	"	"	.19	5.
		1690	"	"	"	.09	2.50
		1692	"	"	"	.28	7.50
		1695	"	"	"	.09	2.50
		1698	"	"	"	.10	2.70
		1703	"	"	"	.28	7.50
		1704	"	"	"	.36	9.50
		1705	"	"	"	.28	7.50
		1707	"	"	"	1.00	26.50
		1709	"	"	"	.11	2.90
		1720	"	"	"	.09	2.50
		1724	"	"	"	.09	2.50
		1733	"	"	"	.09	2.50
		1734	"	"	"	.09	2.50
		1735	"	"	"	.09	2.50
158		1737	"	"	"	.50	13.50
		1738	"	"	"	.38	10.20
		1739	"	"	"	.38	10.20
		1740	"	"	"	.62	16.50
		1741	"	"	"	.62	16.50
		1742	"	"	"	.40	10.60
		1743	"	"	"	.45	12.
		1744	"	"	"	.09	2.50
		1745	"	"	"	.40	10.60
		1746	"	"	"	.40	10.60
		1747	"	"	"	.40	10.60
		1748	"	"	"	.40	10.60
		1749	"	"	"	.40	10.60
		1750	"	"	"	.40	10.60
		1751	"	"	"	.40	10.60
		1752	"	"	"	.40	10.60
		1753	"	"	"	.46	12.50
		1754	"	"	"	.19	5.
	Forwarded.....					1,675.51	17,327.74
	Forwarded.....					1,675.51	17,327.74
		1755	July	14,	1882	.40	10.90
		1756	"	"	"	.40	10.60
		1758	"	"	"	.09	2.50
		1759	"	"	"	.10	2.50
		1760	"	"	"	.29	7.50
		1761	"	"	"	.10	2.50
		1762	"	"	"	.38	10.
		1764	"	"	"	.38	10.
		1770	"	"	"	.....	21.18
		1772	"	"	"	.....	10.15
		1793	"	"	"	.....	25.
		1795	"	"	"	.07	5.20
		1796	"	"	"	1.15	50.
		1798	"	"	"	.13	9.50
		1804	"	"	"	1.46	41.75
		1807	"	"	"	.39	13.
		1814	"	"	"	.06	2.50
		1823	"	"	"	.22	8.80
		1824	"	"	"	.22	8.80

Road	95	"	"	"	.02	4.
Gen'l	1881	"	15,	"	20.08	552.
	1882	"	"	"	.19	5.
	1892	"	19,	"	.....	2.50
	1905	"	"	"	.10	2.50
	1909	"	"	"	2.54	73.85
Road	103	"	"	"	1.53	52.32
	104	"	21,	"	34.70	1,000.
	105	"	"	"	34.70	1,000.
Gen'l	1921	August	14,	"	.72	25.
	1922	"	"	"	.07	2.50
Road	154	"	15,	"	.22	24.
	156	"	"	"	.26	19.25
Gen'l	1928	"	18,	"	19.25	700.
Road	165	"	28,	"	.38	15.
Gen'l	1945	Sept.	1,	"	.25	30.
134 Forwarded					1,796.36	21,088.04
Forwarded					1,796.36	21,088.04
	1947	Sept.	1,	1882	.70	.30
	1950	"	1,	"	2.33	109.16
	1951	"	1,	"	.28	25.
	1960	"	1,	"	.75	48.
					1,800.42	21,300.20 23,100.62

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EXHIBIT L.

DECEMBER 1ST, '2.

Gunnison Co. —, for conversion.

No.	Am't.		Date reg.	Acc. int.	Fow'd
567	117.50	117.50	Aug't 1/81	15.67	
648	96.			9.30	
700	420.	516.	Dec'r 12/81	40.72	
634	16.33	16.33	Dec'r 13/81	1.57	
701	48.70			4.66	
702	112.60	161.30	Dec'r 16/81	10.79	
708	20.	20.	Dec'r 21/81	1.88	
711	125.	125.	Dec'r 27/81	11.59	
712	1,759.	1,759.		162.70	
352	2.50	2.50	Dec'r 23/81	.23	
		2,717.63		259.11	2,976.74
848	12.50			1.10	
855	25.			2.19	
857	22.			1.93	
858	25.			2.19	
859	22.			1.93	
837	27.20	133.70	Jan'y 14/82	2.39	
823	13.			1.13	
951	200.	213.	Jan'y 16/82	17.50	
750	221.21			19.28	
989	32.50	253.71	Jan'y 17/82	2.83	
	690.41			52.47	652.88
704	42.50			4.02	
707	35.	77.50	Dec'r 20/81	3.32	
719	771.01			69.60	
723	1,125.31	1,896.32	Jan'y 6/82	101.57	
733	4.90	4.90	Jan'y 10/82	.44	
739	54.			4.79	
772	163.50			14.47	
762	100.			8.85	
737	50.			4.42	

	741	55.85	423.35	Jan'y 12/82	4.94	
	787	21.50	21.50	Jan'y 13/82	1.91	
	758	30.	30.	Jan'y 13/82	2.65	
	815	13.			1.14	
	780	54.			4.77	
	832	76.25			6.73	Not on book.
	843	47.05			4.15	
	933	12.50	202.80	Jan'y 13/82	1.10	
	Forward.....		2,656.37		238.87	3,629.62

Gunnison Co. —, for conversion. DEC'R 1ST, '2.

	Forward.....		2,656.37		238.87	3,629.62
	828	33.75			2.94	
	793	92.25	126.	Jan'y 17/82	8.02	
	976	22.50			1.94	
	880	37.50			3.24	
	1004	22.50			1.94	
	1003	32.50			2.82	
	1002	22.50			1.94	
	1000	22.50			1.94	
	999	22.50			1.94	
160	1069	235.			20.36	
	975	40.			3.46	
	994	77.50			6.71	
	1005	73.10			6.33	
	779	46.	654.10	Jan'y 19/82	3.95	
	863	24.50			2.17	
	854	10.60			.92	
	853	10.60			.92	
	887	25.			2.19	
	842	155.	225.70	Jan'y 14/82	13.63	
	755	42.50			3.75	
	950	40.15			3.53	
	962	30.			2.65	
	965	75.			6.62	
	974	10.			.88	
	760	30.			2.65	
	963	105.50			9.32	
	970	27.50	360.65	Jan'y 13/82	2.42	
	714	170.			15.05	
	717	143.75	313.75	Jan'y 12/82	12.72	
	716	57.50	57.50	Jan'y 5/82	5.21	
	720	125.			11.28	
	724	36.15	161.15	Jan'y 6/82	3.25	
	728	50.			4.47	
	729	150.			13.42	
	732	413.96	613.96	Jan'y 9/82	37.03	
			5,169.18		460.48	5,629.66
	Forward.....					9,259.28

Gunnison Co. —, for conversion. DEC'R 1, '2.

	Forward.....					9,259.28
	967	15.	15.	Jan'y 13/82	1.32	
	1009	15.			1.30	
	986	12.50			1.08	
	1001	15.			1.30	
	1015	22.50	65.	Jan'y 19/82	1.94	
	765	28.	28.	Jan'y 23/82	2.39	
	786	30.			2.54	
	770	73.	103.	Jan'y 26/82	6.18	

	888	5.20	5.20	Jan'y	28/82	.43		
	747	81.85	81.85	Jan'y	31/82	6.84		
	1241	279.75				22.83		
	1239	150.				12.25		
	877	25.	454.75	Feb'y	7/82	2.03		
	1255	609.20				45.51		
	1258	400.	1,009.20	Mar.	2/82	29.88		
	1261	610.	610.	Mar.	8/82	44.55		
	1113	12.50	12.50	Apr.	3/82	.83		
	1264	125.	125.	Apr.	4/82	8.23		
	1269	300.10	300.10	Apr.	6/82	19.59		
	1374	200.	200.	Apr.	8/82	12.94		
	1391	250.				16.03		
	1263	125.				8.02		
	1265	125.				8.02		
	1375	400.				25.66		
	1270	125.				8.02		
	1268	548.50				35.18		
	1273	301.				19.30		
	1284	121.50	1,996.	Apr.	10/82	7.80		
			5,005.60			351.99		5,357.59
161	1181	17.50	17.50	Jan'y	23/82	1.50		
	1337	155.	155.	Apr.	10/82	9.94		
			172.50			11.44		183.94
	1225	25.60				2.18		
	898	25.				2.18		
	897	22.	72.60	Jan'y	23/82	1.88		
	1211	20.	20.	Jan'y	26/82	1.69		
	1237	150.	150.	Feb'y	2/82	12.46		
			242.60			20.39		262.99
	Forward.							15,063.80

Dec'r 1, '2.

Gunnison county —, for conversion.

	Forward.							15,063.80
	1373	69.	69.	Apr.	8/82	4.46		
	1453	204.20				10.15		
	1454	390.				19.39		
	1455	626.30	1,220.50	June	2/82	31.15		
	1638	300.	300.	July	11/82	11.67		
	1503	69.	69.	July	19/82	2.53		
			1,658.50			79.35		1,737.85
	451	125.				20.62		
	450	125.	250.	Apr.	7/81	20.62		
	568	349.75	349.75	Aug't	1/81	46.63		
	666	95.95	95.95	Oct.	13/81	10.87		
	364	2.50	2.50	Nov.	11/81	.26		
	494	10.				1.05		
	383	18.				1.88		
	574	3.50				.37		
	688	600.	631.50	Nov.	14/81	62.83		
	691	275.				28.26		
	358	2.50				.26		
	694	134.40				13.78		
Road ...	47	165.				16.96	Road warrant.	
	693	539.50	1,116.40	Nov.	21/81	55.44		
	696	450.				44.75		
	699	241.20				23.98		

698	325.15				32.32	
697	204.50	1,220.85	Dec'r	3/81	20.32	
		3,666.95			401.20	4,068.15
1879	2,274.70	2,274.70	July	15/82	85.93	
1558	18.25	18.25	July	18/82	.68	
1791	30.	30.	July	24/82	1.06	
1894	59.	59.	July	25/82	2.06	
1912	210.05				7.29	
1776	12.	222.05	July	26/82	.42	
1875	312.50				10.76	
1573	10.				.34	
1889	618.40				21.29	
1574	2.50				.08	
1827	957.	1,900.40	July	27/82	32.95	
Forward		4,504.40			162.86	20,869.80

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Gunnison Co. —, for conversion. DEC'R 1ST, '2.

Forward		4,504.40			162.86	20,869.80
1559	94.20	94.20	Aug't	2/82	3.11	
1769	5.				.16	
1572	5.				.16	
1780	70.				2.28	
1914	250.				8.18	
1480	280.	610.	Aug't	3/82	9.17	
1904	107.95				3.40	
1800	50.				1.58	
1802	76.50				2.41	
1777	42.				1.33	
1906	40.	316.45	Aug't	7/82	1.26	
		5,525.05			195.90	5,720.95
603	1,000.	1,000.	Sept.	13/81	121.66	
713	238.				21.54	
715	750.	988.	Jan'y	5/82	67.91	
738	475.10				42.10	
742	1,451.	1,926.10	Jan'y	12/82	128.54	
1071	10.				.87	
819	13.				1.13	
814	13.				1.13	
817	13.				1.13	
818	13.				1.13	
820	13.				1.13	
816	13.				1.13	
825	13.				1.13	
821	13.				1.13	
822	13.				1.13	
785	62.	189.	Jan'y	16/82	5.43	
945	22.50				1.94	
918	22.50				1.94	
1068	115.				9.96	
997	75.				6.50	
977	30.				2.59	
984	35.				3.02	
987	35.				3.02	
996	25.				2.16	
998	25.				2.16	
1010	50.	435.	Jan'y	19/82	4.33	
Forward		4,538.10			435.84	26,590.75

DEC'R 1ST, '2.

Gunnison Co. —, for conversion.

	Forward			4,538.10			435.84	26,590.75
	1153	6.		6.	Mar.	29/82	.40	
	1111	10.					.54	
	1447	115.50					6.25	
	1445½	658.					35.64	
	1327	2.					.10	
	1329	2.					.10	
	1341	12.					.65	
	1345	12.					.65	
	1328	2.50					.13	
	912	2.50					.13	
	911	25.					1.36	
	1444	147.		988.50	May	16/82	7.96	
				5,532.60			489.75	6,022.35
163	1668	70.					2.64	
	1669	355.					13.40	
	1670	25.					.94	
	1671	22.50					.84	
	1672	25.					.94	
	1677	38.80					1.46	
	1678	28.90					1.09	
	1679	35.50					1.33	
	1680	30.90					1.16	
	1683	35.90					1.35	
	1684	20.					.76	
	1685	17.50					.66	
	1686	25.					.94	
	1689	25.					.94	
	1691	24.					.90	
	1693	26.50					1.00	
	1696	24.					.90	
	1697	26.50					1.00	
	1700	29.70					1.11	
	1702	26.10					.97	
	1706	10.					.37	
	1716	26.10					.97	
	1717	26.50					1.00	
	1718	38.50					1.45	
	1719	26.50		1,039.40	July	15/82	1.00	
	Forward			1,039.40			39.12	32,613.10

DEC'R 1ST, '2.

Gunnison Co. —, for conversion.

	Forward			1,039.40			39.12	32,613.10
	1721	26.50					1.00	
	1722	26.50					1.00	
	1723	26.50					1.00	
	1725	24.					.90	
	1726	26.50					1.00	
	1727	26.50					1.00	
	1728	26.50					1.00	
	1729	26.50					1.00	
	1730	26.50					1.00	
	1731	21.					.79	
	1732	23.50					.88	
	1736	37.50					1.41	
	1757	12.70					.47	
	1763	120.					4.53	
	1883	10.		460.70	July	15/82	.37	
				1,500.10			56.47	1,556.57

	390	14.50					2.20	
	391	9.50					1.45	
	392	14.50					2.20	
	393	13.					1.98	
	394	14.50					2.20	
	389	8.50					1.29	
	395	14.50	89.00	May	23/81		2.20	
	554	2.50	2.50	Sept.	22/81		.30	
	508	5.					.58	
	544	25.	30.	Oct.	1/81		2.92	
	608	125.	125.	Oct.	3/81		14.51	
	610	11.60					1.33	
	611	11.60	23.20	Oct.	5/81		1.33	
	626	7.					.78	
164	628	45.	52.	Oct.	10/81		5.12	
	627	6.50					.73	
	577	30.					3.40	
	630	47.40					5.37	
	622	600.	683.90	Oct.	13/81		68.	
	672	29.75	29.75	Oct.	15/81		3.35	
	302	102.25	102.25	Oct.	17/81		11.45	
	Forward		1,137.60				132.69	341,696.67

Gunnison Co. —, for conversion. DEC'R 1ST, '2.

	Forward		1,137.60				132.69	34,169.67
	668	123.25					13.71	
	681	192.50					21.43	
	637	13.20					1.47	
	665	55.55					6.18	
	638	15.50					1.72	
	657	18.	418.	Oct.	20/81		2.01	
	685	192.10	192.10	Oct.	22/81		21.29	
	687	600.	600.	Nov.	3/81		64.67	
			2,347.70				265.17	2,612.87
	447	87.40					14.30	
	477	250.	337.40	Apr.	12/81		40.89	
	604	500.	500.	Sept.	17/81		60.27	
			837.40				115.46	952.86
	671	38.40	38.40	Oct.	27/81		4.20	
	801	176.50					15.09	
	800	198.	374.50	Jan'y	23/82		16.94	
	907	32.50	32.50	Jan'y	26/82		2.74	
	1828	98.95	98.95	Jan'y	15/82		3.71	
			544.35				42.68	587.03
	1901	209.40	209.40	July	21/82		7.56	216.96
								38,539.39

Office of Rollins & Young, brokers and dealers in investment securities, 403 Lawrence street.

DENVER, COLO., *Dec'r 1st*, 1882.

Gunnison Co. warrants, for conversion.

No.	Amount.	Total.	Date of registration.	Acc. int.	Total.	Rate.	Am't paid.
1523	10.			.37			
1535	6.	16.	July 15/82	.23			
1524	30.			1.11			
1785	35.	65.	July 18/82	1.29			
1808	47.70	47.70	July 17/82	1.77			
1664	169.80			5.66			
1799	70.	239.80	Aug. 1/82	2.33			
1895	37.50	37.50	Aug. 5/82	1.20			
1967	13.15	13.15	Sept. 23/82	.25			
1543	12.	.12	Oct. 13/82	.16	Not on registry book.		
149	333.26	333.26	Oct. 31/82	2.78			
	C	764.41	C	17.15	781.56	C	

165 Gunnison Co. warrants.

No.		Amount.	Date — registration.	Acc. int.	Total.	Rate.	Am't paid.
703	484.50				47.86		
705	410.	894.50	Dec. 17, '81	85.22	37.63		
709		250.	" 29, "	22.98	22.98		
710		125.	" 27, "	11.56	11.56		
	C	1,269.50	C	119.76	1,389.26	C	

Gunnison County warrants.

No.	Amount.	Total.	Date of registration.	Acc. int.	Total.	Rate.	Am't paid.
633		940.	Oct. 12, 1881	106.53			
690		558.	Nov. 21, "	57.20			
689		1,726.60	Dec. 2, "	171.71			
635		785.65	" 5, "	77.48			
718		332.46	Jan'y 6, 1882	29.90			
727		451.72	" 9, "	40.26			
736	240.40						
797	294.70	535.10	" 12, "	47.28			
860	24.50						
861	24.50						
862	24.50						
864	15.						
845	30.						
870	15.						
928	30.	163.50	" 14, "	14.35			
839	16.15						
919	35.30						
946	82.50						
1182	10.	143.95	" 16, "	12.52			
1012	32.50						
1027	40.						
1032	35.60						
1045	26.						
49	32.50						
1	37.50	204.10	" 19, "	17.62			
840		32.95	" 20, "	2.84			
792		134.60	" 23, "	11.51			
656	33.						
746	45.						
774	35.40						
899	17.						
1215	83.20						

1218	80.25					
1219	46.40					
1235	98.50	438.75	" 26, "	37.13		
1236		559.50	" 31, "	46.63		
1073	35.					
1092	12.50					
1248	85.					
1250	186.10					
1252	260.	578.60	Feb. 28, "	43.40		
1254		621.50	Mar. 1, "	46.56		
1253		201.	" 2, "	14.97		
		8,407.98		777.89	9,185.87	

166

EXHIBIT M.

Abstract of the assessment of Gunnison county, State of Colorado, for the year A. D. 1880, as required by law and as corrected by the county board of equalization.

Number of—		Valuation. Dollars. Cts.
1,580	Acres of land	12,858
	Acres of grazing land	
	Acres of coal land	
	Improvements on lands	1,730
	Improvements on public lands	24,456
2,748	Town and city lots	90,165
	Improvement on town and city lots	19,855
	Mining property and gross output	
	Miles of railroads and other property, as returned by the State board of equalization	
	Miles of telegraph and telephone lines, as returned by the State board of equalization	
	Average value of merchandise	70,482
	Amount of capital employed in manufactures	2,125
879	Horses	35,626
257	Mules	15,155
22	Asses, jacks	442
2,739	Cattle	36,623
	Sheep	
30	Swine	194
	Goats	
	All other animals	
19	Musical instruments	774
231	Clocks and watches	5,424
	Gold and silver plate	376
	Amount of money and credits	
224	Carriages and vehicles of every description	8,754
	Household property	11,570
	All other property	123,960
	Bank stock or shares in any bank, or stock or shares in any corporation or company	78,650
	Money and credits	57,334
	Grand total valuation of county	$596,553
	Number of military polls	940

I hereby certify that the above and foregoing is a full, true and correct abstract of the assessment of this Gunnison county as shown by the records and books in this office.

In testimony whereof, I have hereunto set my hand this 19th day of May, A. D. 1896.

[SEAL.] C. C. PARKS, *Auditor.*

Indorsed: Copy. Abstract of assessment of Gunnison county for the year 1880. Received at the office of the State auditor —— —, 189–. Amount charged and duplicate sent to county clerk —— —, 189–. Remarks: ——.

167 EXHIBIT N.

Abstract of the assessment of Gunnison county, State of Colorado, for the year A. D. 1881, as required by law and as corrected by the county board of equalization.

Number of—		Valuation. Dollars. Cts.
7,249	Acres of land	53,576
	Acres of grazing land	
	Acres of coal land	
	Improvements on lands	42,780
	Improvements on public lands	499,019
	Town and city lots	
	Improvement on town and city lots	
	Mining property and gross output	
	Miles of railroads and other property, as returned by the State board of equalization	
	Miles of telegraph and telephone lines, as returned by the State board of equalization	
	Average value of merchandise	233,305
	Amount of capital employed in manufactures	60,325
915	Horses	56,782
202	Mules	16,070
	Asses	
4,659	Cattle	75,082
	Sheep	
10	Swine	79
	Goats	
16	All other animals	437
40	Musical instruments	1,731
282	Clocks and watches	4,962
	Diamonds, jewelry, gold and silver plate	265
	Amount of money and credits	
202	Carriages and vehicles of every description	11,387
	Household property	22,471
	All other property	99,897
	Bank stock or shares in any bank, or stock or shares in any corporation or company	15,650
	Amount of money and credits	73,144
	Grand total valuation of county	1,266,962
	Number of military polls	

I hereby certify that the above and foregoing is a full, true, and correct abstract of the assessment of this Gunnison county, as shown by the books and records of this office.

In testimony whereof, I have hereunto set my hand this 19th day of May, A. D. 1896.

[SEAL.] C. C. PARKS, *Auditor.*

Indorsed: Copy. Abstract of assessment of Gunnison county for the year 1881. Received at the office of the State auditor ——, 189–. Amount charged and duplicate sent to county clerk ——, 189–. Remarks: ——.

168 EXHIBIT O.

Abstract of the assessment of Gunnison county, State of Colorado, for the year A. D. 1882, as required by law and as corrected by the county board of equalization.

Number of—		Valuation. Dollars. Cts.
12,299	Acres of land	92,889
	Acres of grazing land	
	Acres of coal land	
	Improvements on lands	125,062
	Improvements on public lands	
	Town and city lots	836,051
5	Improvement on town and city lots	
	Mining property and gross output	
59[237]	Miles of railroads and other property, as returned by the State board of equalization.	423,774.86
	Miles of telegraph and telephone lines, as returned by the State board of equalization.	
	Average value of merchandise	233,798
	Amount of capital employed in manufactures	24,735
2,194	Horses	116,730
868	Mules	58,760
	Asses	
9,647	Cattle	150,146
1	Sheep	2
12	Swine	120
	Goats	
27	All other animals	285
68	Musical instruments	4,510
461	Clocks and watches	8,887
	Diamonds, jewelry, gold and silver plate	2,353
	Amount of money and credits	73,720
774	Carriages and vehicles of every description	33,431
	Household property	13,630
	All other property	107,712.14

Bank stock or shares in any bank, or stock or shares in any corporation or company.	31,561
Amount of premiums taken by insurance companies during the previous year, as required by section 13, page 746, General Laws 1877	2,799
Grand total valuation of county.....	2,340,956
Number of military polls.....	

I hereby certify that the above and foregoing is a full, true and correct abstract of the assessment of this Gunnison county, as shown by the books and records of this office.

In testimony whereof, I have hereunto set my hand this 19th day of May, A. D. 1896.

[SEAL.] C. C. PARKS, *Auditor.*

Indorsed: Copy. 5. Abstract of assessment of Gunnison county for the year 1882. Received at the office of the State auditor ——, 189–. Amount charged and duplicate sent to county clerk ——, 189–. Remarks: ——.

169 And forasmuch as the said several matters so produced, given in evidence, had and done in said cause aforesaid, objected to and insisted upon as aforesaid, had and done as aforesaid, do not appear by the record of the finding and judgment of said court aforesaid, the said attorneys and counsel for said plaintiffs did then and there interpose their aforesaid exceptions to the opinion, finding and judgment of the said court and the judge thereof, and request him to put his seal and signature to this bill of exceptions showing the said several matters so produced, given in evidence and had as aforesaid in this cause, according to the form of the statute in such case made and provided; and thereupon the said judge, at the request of said counsel for said plaintiffs, did put his seal to this bill of exceptions and sign the same, pursuant to the aforesaid statute in such case made and provided, and on, to wit: the 17th day of June, A. D. 1896.

MOSES HALLETT, [SEAL.]
Circuit Judge.

Indorsed: 3201. U. S. circuit court. E. H. Rollins & Sons *vs.* The Board, etc., Gunnison County. Bill of exceptions. Filed Jun-17, 1896. Robert Bailey, clerk.

Petition for Writ of Error and Citation in Error.

In the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

E. H. ROLLINS AND SONS, Plaintiffs in Error,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, Defendant.

To the honorable the United States circuit court of appeals of the eighth judicial circuit, sitting at the city of St. Louis and State of Missouri, and to the judges thereof:

The petition of E. H. Rollins and Sons, a corporation duly organized under the laws of the State of New Hampshire, respectfully shows to this court that on the 20th day of May, A. D. 1896, on the trial in the circuit court of the United States for the district of Colorado, judgment was erroneously entered against it, the said plaintiff in error, and in favor of the defendant in error, for costs of suit.

That in the record and proceedings in said cause there is manifest error, which error is more specifically set forth in the assignment of errors herewith presented.

170 That exceptions to said judgment, and errors assigned as aforesaid, have been duly preserved by a bill of exceptions; which said bill of exceptions is submitted herewith.

Wherefore, the said plaintiff in error prays that a writ of error and citation may be allowed to issue in this cause, to the end that said errors assigned as aforesaid may be considered by this honorable court.

E. F. RICHARDSON &
H. B. JOHNSON,
Attorneys for Plaintiff in Error.

Indorsed: 3201. U. S. circuit court. E. H. Rollins & Sons *vs.* The Board, etc., Gunnison County. Petition for writ of error. Filed Jun- 17, 1896. Robert Bailey, clerk.

Assignment of Errors.

United States Circuit Court of Appeals of the Eighth Judicial (*District*).

E. H. ROLLINS AND SONS, Plaintiffs in Error,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, Defendants in Error.

Now this day come the plaintiffs in the above-entitled cause and for assignment of errors herein say that in the record and proceedings in said cause there is manifest error, in this:

First. That the court erred in admitting the certificates of the assessed valuation of the taxable property of Gunnison county, which said certificates are marked Exhibits D, E, F, M, N, and O, and show assessed valuation for 1882 to have been $2,340,955.00.

Second. The court erred in admitting in evidence the semi-annual statements of the indebtedness of said Gunnison county, made December 31st, 1881, June 30th, 1882, and December 31st, 1882, marked as Exhibits G, H, and I, and in overruling plaintiffs' motion to strike out the same, which show indebtedness of said county to have been $118,691.49 on June 30th, 1882.

Third. That the court erred in admitting in evidence the record of the proceedings of the Board of County Commissioners of said Gunnison County, marked Exhibit J, showing the amount of the indebtedness of said county to have been $174,115.29 on September 2nd, 1882.

Fourth. That the court erred in admitting secondary evidence as to the nature and contents of the book in which said semi-
171 annual statements are claimed to have been recorded, and in overruling the motion of the plaintiffs to strike out such evidence.

Fifth. That the court erred in admitting in evidence a list of the warrants which were funded by the issuance of said funding bonds, which list is marked Exhibit K.

Sixth. That the court erred in admitting the memorandum of Seeley made in relation to said warrants, which is marked Exhibit L.

Seventh. That the court erred in charging the jury as follows: "There was considerable discussion in the courts as to whether, if the county should recite in any obligation which it issued that it had complied with the terms of the constitution and with the law of the State, and the indebtedness which had been created or which was recognized in the obligation issued, was more than was authorized under the constitution, whether the county would be estopped by such a statement as that in the bond or other obligation that might be issued; and there were conflicting decisions in the courts upon this subject; some of the courts being inclined to follow the old rule which had been established in the early history of the subject, to the effect that if the municipal body recited the fulfillment of the conditions imposed upon it, it was thereby estopped from denying the fact; other courts, perceiving that if there was an absence of power it, the county, had no power to create an indebtedness, its declaration that it had such power could not be effective as a grant of power, and could not confer a power which did not exist; that there could be no rule of estoppel in any such case. And so we have it now settled that whatever the form of obligation which may be issued by a county, whatever may be declared in that obligation as to the conditions under which it is issued, the question whether the county had authority under the constitution to issue such obligation is still open to investigation and consideration."

Eighth. The court erred in instructing the jury as follows: "The act of the State under which the bonds in question in this suit were issued was passed in the year 1881. It is entitled 'An act to enable

the several counties of the State to fund their floating indebtedness.' In the act itself, in the title of the act, and in the body of the act, the circumstance that the bonds issued pursuant to its terms are in settlement of pre-existing indebtedness, is everywhere manifest. So that there is no room in any controversy which may arise in respect to bonds issued under this act, for any contention that the bonds were issued to be sold for money in the market. They were to be issued only for funding purposes; that is to say, to get the
172 indebtedness existing upon the records of the county into one sum and to issue certificates therefor. In the first section of the act, and towards the end of the section, it is provided that the whole amount of bonds issued under the act shall not exceed the sum of the county indebtedness at the date of the first publication of the aforementioned notice, and the amount shall be determined by the county commissioners and a certificate made of the same, and made a part of the records of the county. That is to say, in proceeding under the act, the county commissioners in the first place were to ascertain the amount of the existing indebtedness of the county and to make a certificate of it and record the fact. Thus they were required by the act itself to put upon record the amount of the indebtedness. There was an earlier act, passed in the year 1877, four years earlier, which provided in its thirtieth section that the county commissioners of each county should make semi-annual statements and publish the same in a newspaper, which statements shall show the amount of debt owing by the county, in what the debt consists, what payments, if any, have been made upon the same, the rate of interest, and so on. Also a detailed account of the receipts and expenditures of the county for the preceding months, and so on. And this statement is to be recorded in a book to be kept by the clerk of the board for that purpose only. So that there were at the time of these transactions two acts requiring a record to be made of the indebtedness of the county—the act of 1877, requiring that this record should be made twice in each year, and the act of 1881, requiring that it should be made as a preliminary to the issue of bonds under the act. So that there is no room for controversy that there must be in the records of the county a statement and account of the indebtedness of the county; in any controversy this amount is one of the facts to be ascertained, that is to say, there must be if a purchaser of bonds issued under the act of 1881 is to be charged with notice of facts which are to be ascertained in order to determine whether the constitutional provision has been complied with, a record of the indebtedness of the county."

Ninth. The court erred in instructing the jury as follows: "I have not called your attention before to the fact that the constitutional provision is that counties having a valuation of less than one million dollars shall not be subject to its provisions; so that in the year 1880 there was no limitation to the county of Gunnison in respect to its indebtedness; but there was such a limitation in 1881 and 1882 at the time the bonds in suit were issued. In the discussion of these questions before the court counsel seemed disposed to con-

tend that under the constitutional provision there might
173 be an indebtedness created in each year to the extent specified in the constitution, whether there was any pre-existing indebtedness or not, and that the indebtedness incurred prior to the year 1881 should not be counted as part of the indebtedness existing in the year 1882, at the time these bonds were issued. There is no ground for such position. The constitution does not at all mean that the county may in each year incur an indebtedness of six mills in the dollar, or of twelve mills in the dollar of the valuation of its property; but that the indebtedness shall at no time exceed that; that is to say, whether the indebtedness be created in one way or another, it stands as an aggregate at the time of issuing any securities, and if at that time it exceeds the constitutional limit, then there is no power to create any indebtedness whatever. But (is) that were not true, and if the rule be as counsel contends, the semi-annual statements put in evidence before you show that the increase in the years 1881 and 1882, was greatly in excess of the constitutional limit."

Tenth. The court erred in instructing the jury as follows: "A question has been made as to whether the bonds issued in this case—I believe there were about one hundred and seventy-five thousand dollars of them—that is the amount of indebtedness which the commissioners found to be existing on the first of September, 1892, when they made up their accounts for issuing the bonds, a question has been made whether the bonds may not be valid in some part; that is, as to the part for which the county was really bound upon the warrants, because certainly there were some of the warrants valid, and the remainder to be void under the constitution. Counsel stated that there was in the year 1882 property in the county to incur an indebtedness of twenty-eight thousand dollars, or something like that, referring to the constitutional provision and the assessed valuation of the property within the county. And so there was some disposition upon the part of counsel to contend that there was at least this amount of bonds which can be recognized as valid and subsisting obligations of the county, even if the remainder shall be rejected; some of these bonds in suit are of numbers which might fall below that sum; as I believe, there were nine to thirteen which would be below twenty-eight thousand, and then there were sixty-five to sixty-nine, or some number in the sixties, which would be far beyond it, and ninety-eight, which is still farther along in the dim distance. But we cannot go upon any such principle as that. The rule established in the courts is, that if, of a series of obligations issued there may be any of them void, the court cannot distinguish between them."

174 Eleventh. The court erred in instructing the jury as follows: "Some question has been made also whether the plaintiff here may be regarded as an innocent purchaser of the bonds for value. If it were necessary to ascertain that fact it would perhaps be a matter of some difficulty. Mr. Standley, who first came to the possession of the bonds as a holder for value, held warrants which were funded in the bonds to the extent of one-half of them, five

thousand dollars. I am inclined to think that he would not be an innocent purchaser in respect to the bonds which he obtained for those warrants; he would stand in the same position in regard to the bonds as he held in respect to the warrants which he gave in exchange for the bonds. He purchased the other five thousand dollars from Rollins and Young, and Rollins and Young were pretty familiar with the condition of affairs over there. They got all of the bonds, or nearly all of them, in exchange for warrants which they surrendered. Afterwards the present plaintiff, who is the legal and perhaps natural heir of Rollins and Young, repurchased the bonds. Whether the plaintiff, having first obtained the bonds in exchange for warrants, and afterwards repurchased them from Mr. Standley, could now stand as an innocent purchaser would be a matter of some difficulty if we were required to solve it in this action; but we are not concerned about that matter because the rule applicable to the case is that if the records of the county disclose facts which show that the bonds were invalid under the constitutional provision, an innocent purchaser, and every purchaser, must take notice of those facts; in other words, he is bound to examine the records with a view to inform himself as to the power of the county, before he makes a purchase of the bonds. Not doing so he is held to have purchased them with full knowledge of whatever is disclosed in the records, and in this instance the record of the county abundantly shows the amount of the indebtedness and the assessed valuation of the property of the county."

Twelfth. The court erred in instructing the jury as follows: "We come to the conclusion, then, gentlemen, as a matter of law, that upon the facts fully explained in the evidence the plaintiff is not entitled to recover; therefore you are relieved from determining some questions of fact which it was thought in the beginning it might be necessary to take your opinion of. We shall be compelled to ask you to render a verdict for the defendant."

Thirteenth. The court erred in directing and requiring the jury to find a verdict for the defendant.

175 Wherefore, plaintiffs pray that the judgment herein may be reversed, and judgment entered for plaintiffs; or the court below directed to enter such judgment.

E. F. RICHARDSON,
H. B. JOHNSON,
Attorneys for Plaintiffs.

Indorsed: 3201. U. S. circuit court. E. H. Rollins & Sons *vs.* The Board, etc., Gunnison County. Assignment of errors. Filed Jun- 17, 1896. Robert Bailey, clerk.

THE UNITED STATES OF AMERICA, }
District of Colorado. }

Know all men by these presents, that we, E. H. Rollins & Sons, T. H. Reynolds and H. B. Johnson are held and firmly bound unto the Board of County Commissioners of the County of Gunnison, in

the full and just sum of five hundred (500) dollars, to be paid to the said Board of County Commissioners of the County of Gunnison, its heirs, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 5th day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas, lately at the May term, A. D., 1896, of the circuit court of the United States for the district of Colorado, in a suit pending in said court between E. H. Rollins & Sons, a corporation, plaintiff, and The Board of County Commissioners of the County of Gunnison, defendant, a judgment was rendered against the said E. H. Rollins & Sons and the said E. H. Rollins & Sons having obtained a writ of error to the United States circuit court of appeals for the eighth circuit to reverse the judgment of said court and a citation directed to the said Board of County Commissioners of the County of Gunnison citing and admonishing it to be and appear in the United States circuit court of appeals, for the eighth circuit at the city of St. Louis, Missouri, sixty days from and after the date of said citation:

Now, the condition of the above obligation is such that if the said E. H. Rollins & Sons shall prosecute said writ of error to effect, and answer all damages and costs, if it fails to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of—

E. H. ROLLINS & SONS, [SEAL.]
By H. B. JOHNSON, *Att'y.* [SEAL.]
T. H. REYNOLDS. [SEAL.]
H. B. JOHNSON. [SEAL.]

Approved.
JOHN A. RINER, *Judge.*

176 *Justification.*

THE UNITED STATES OF AMERICA, } ss:
District of Colorado, }

T. H. Reynolds and H. B. Johnson sureties on the within bond, being each first duly sworn, deposes and saith that he is worth in real estate and personal property the sum below set opposite his name, that is to say:

As to T. H. Reynolds, five hundred dollars,

As to H. B. Johnson, five hundred dollars, over and above all his just debts and liabilities and in property subject to levy and sale upon execution.

T. H. REYNOLDS.
H. B. JOHNSON.

Subscribed and sworn to before me at Denver this fourteenth day of August, A. D. 1896.

[SEAL.]

ALBERT E. GRIER,
Notary Public.

Indorsed: Gen. No. 3201. Circuit court of the United States, district of Colorado. E. H. Rollins & Sons *vs.* Gunnison County. Bond on appeal. $500. Filed this 17th day of August, A. D. 1896. Robert Bailey, clerk.

Writ of Error to United States Circuit Court of Appeals, Eighth Circuit.

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Colorado, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the May term, 1896, thereof, between E. H. Rollins and Sons, plaintiff in error and The Board of County Commissioners of the County of Gunnison, defendant in error, a manifest error hath happened, to the great damage of the said E. H. Rollins and Sons, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of ap-
177 peals, for the eighth circuit, together with this writ, so that you have the said record and proceedings aforesaid at the city of St. Louis, Missouri, and filed in the office of the clerk of the United States circuit court of appeals, for the eighth circuit, on or before the sixteenth day of October, 1896, to the end that the record and proceedings aforesaid being inspected, the United States circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 17th day of August, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the the 121st year. Issued, at office in Denver, in said district, with the seal of the circuit court of the United States, for the district of Colorado, and dated as aforesaid.

Seal United States Circuit Court, District of Colorado.

ROBERT BAILEY,
Clerk Circuit Court United States, District of Colorado.

Allowed by—

JOHN A. RINER, *Judge.*

Return.

THE UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In obedience to the command of the within writ, I herewith transmit to the honorable the United States circuit court of appeals a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

In witness whereof, I hereto subscribe my name, and affix the seal of said circuit court of the United States, for the district of Colorado, at Denver, in said district, this 15th day of September, 1896.

Seal United States Circuit Court, District of Colorado.

ROBERT BAILEY, *Clerk,*
By CHARLES W. BISHOP,
Deputy Clerk.

178 Gen. No. 3201. United States circuit court of appeals, eighth circuit. E. H. Rollins & Sons, plaintiff in error, *vs.* The Board, etc., Gunnison County, defendant in error. Writ of error to circuit court U. S., district of Colorado. Filed in the United States circuit court, district of Colorado, this 17th day of August, A. D. 1896. Robert Bailey, clerk. H. B. Johnson, attorney for plaintiff in error.

Citation — United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA, }
District of Colorado. }

The United States of America to the Board of County Commissioners of the County of Gunnison, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals, for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, for the district of Colorado, sitting at Denver, in said district, wherein E. H. Rollins and Sons is plaintiff in error, and you are defendant in error, to show cause if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable John A. Riner, judge of the district court of the United States for the district of Wyoming holding the circuit court of the United States for the district of Colorado, this 17th day of August, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN A. RINER, *Judge.*

Service accepted this 15th day of September, A. D. 1896.

C. S. THOMAS,
W. H. BRYANT,
H. H. LEE,
Att'ys for Def't.

Gen. No. 3201. United States circuit court of appeals, eighth circuit. E. H. Rollins & Sons, plaintiff in error, *vs.* The Board, etc., Gunnison County, defendant in error. Citation. Filed in United States circuit court for the district of Colorado, this 17th day of August, A. D. 1896. Robert Bailey, clerk. Teller, Orahood & Morgan, D. E. Parks & H. B. Johnson, attorney- for plaintiff in error.

179 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I, Robert Bailey, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing pages numbered from one to two hundred and sixty-nine, both inclusive, to be a true, perfect and complete transcript and copy of the record and proceedings and of all thereof heretofore filed or had and entered of record in said court, and in a certain cause lately in said court pending wherein E. H. Rollins & Sons, a corporation, were plaintiffs and The Board of County Commissioners of the County of Gunnison were defendants, as fully and completely as the same still remain on file or of record in my office at Denver.

Seal United States Circuit Court, District of Colorado.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 15th day of September, A. D. 1896.

ROBERT BAILEY, *Clerk,*
By CHARLES W. BISHOP,
Deputy Clerk.

Filed Sept. 30, 1896.

JOHN D. JORDAN, *Clerk.*

180 (*Appearance for Plaintiff in Error.*)

And on the fifth day of October, A. D. 1896, an appearance of counsel for plaintiff in error was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, Dec. Term, 1896.

E. H. ROLLINS & SONS, Plaintiff in Error,
vs.
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF Gunnison. } No. 856.

The clerk will enter my appearance as counsel for the plaintiff in error.

H. B. JOHNSON.

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1896. No. 856. E. H. Rollins & Sons, plaintiff in error, *vs.* Board of County Commissioners of the County of Gunnison. Appearance. Filed Oct. 5, 1896. John D. Jordan, clerk. H. B. Johnson, counsel for pl'ff in error.

(*Appearance for Defendant in Error.*)

And on the 5th day of October, A. D. 1896, an appearance of counsel for defendant in error was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

E. H. ROLLINS AND SONS, Plaintiff in Error,
vs.
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF Gunnison. } No. 856.

181 The clerk will enter *my* appearance as counsel for the defendant in error.

C. S. THOMAS.
W. H. BRYANT.
H. H. LEE.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term, 1896. No. 856. E. H. Rollins & Sons, plaintiff in error, *vs.* Board of County Commissioners of the County of Gunnison. Appearance. Filed Oct. 5, 1896. John D. Jordan, clerk. C. S. Thomas, W. H. Bryant, H. H. Lee, counsel for def't in error.

(*Appearance for Plaintiff in Error.*)

And on the fourth day of December, A. D. 1896, an appearance of counsel for plaintiff in error was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

E. H. ROLLINS & SONS, Plaintiff in Error,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Gunnison. } No. 856.

The clerk will enter my appearance as counsel for the plaintiff in error.

J. E. McKEIGHAN.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term, 1896. No. 856. E. H. Rollins & Sons, pl'ff in error, *vs.* The Board of County Commissioners of the County of Gunnison. Appearance. Filed Dec. 4, 1896. John D. Jordan, clerk. J. E. McKeighan, counsel for pl'ff in error.

182 (*Motion and Notice of Motion to Amend Bill of Exceptions.*)

And on the twenty-sixth day of January, A. D. 1897, a motion and notice of motion to amend bill of exceptions was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

In the United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

E. H. Rollins & Sons, Plaintiff in Error,
vs.
The Board of County Commissioners of the County of Gunnison, Colorado, Defendant in Error. } No. 856.

To the above-named defendant in error:

You will please take notice that on the incoming of said court on Tuesday, January 26th, 1897, at St. Louis, Mo., or as soon thereafter as counsel can be heard, we will call for hearing and submission a motion, a copy of which is hereto attached, and support the same by printed brief, a copy of which is herewith served, and we will also support said motion by affidavits filed in support thereof.

WILLARD TELLER,
E. F. RICHARDSON,
H. B. JOHNSON,
Attorneys for Plaintiff in Error.

Received this 20th day of January, 1897, a copy of the above notice, with motion attached, and also a copy of the printed brief in support of such motion.

THOMAS, BRYANT & LEE,
Attorneys for Def't in Error.

183 In the United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

E. H. Rollins & Sons, Plaintiff in Error,
vs.
The Board of County Commissioners of the County of Gunnison Colorado, Defendant in Error. } No. 856.

Now, at this day, comes the plaintiff in error in the above-entitled cause and moves the court to enter an order authorizing the court below to amend the bill of exceptions to show whether the same does or does not contain all the evidence given upon the trial

of said cause, and to continue the same until such amendment can be made, for the following reasons:

1. Because said bill does, as a matter of fact, contain all the evidence given at the trial.

2. Because the usual recital was left out by mistake and the mistake was not discovered until about January 1, 1897.

3. Because the court below holds that it can make the correction only by consent of parties, and the defendant in error has refused such consent.

4. Because the said parties have stipulations that other suits involving this entire issue of bonds shall abide the event of this case, provided the merits of the case are fully adjudicated.

5. Because there can be no full or fair review of the judgment herein without such amendment.

WILLARD TELLER,
E. F. RICHARDSON,
H. B. JOHNSON,
Attorneys for Plaintiff in Error.

Endorsed: In the United States circuit court of appeals, eighth circuit, December term, 1896. E. H. Rollins & Sons, plaintiff in error, *vs.* The Board of County Commissioners of the County of Gunnison, Colorado, defendant in error. No. 856. Motion and notice of motion for leave to amend bill of exceptions. Filed Jan. 26, 1897. John D. Jordan, clerk.

184 (*Affidavit of H. B. Johnson in Support of Motion.*)

And on the twenty-sixth day of January, A. D. 1897, an affidavit of H. B. Johnson in support of motion was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

In the United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

E. H. Rollins & Sons, Plaintiff in Error,
vs.
The Board of County Commissioners of the County of Gunnison, Colorado, Defendant in Error. } No. 856.

H. B. Johnson, being duly sworn, says that he is one of the attorneys for plaintiff in error who tried said cause in the lower court; that he was assisted upon said trial by E. F. Richardson, Esq.; that no one else participated in such trial upon the part of plaintiff in error; that Lillian Griffin was employed by Mr. Richardson and affiant to report said cause and prepare the bill of exceptions; that from her long and great experience as a reporter in the said circuit court of the United States and her general reputation as being entirely competent to properly perform such work, she was fully intrusted with the duty of preparing the bill of exceptions in said

cause; that she was instructed by affiant to make a full and perfect bill of exceptions, containing all the evidence given upon said trial; that the bill of exceptions as prepared by her was presented to the court by affiant without any special examination and in full reliance that the same was perfect and complete; that the same was signed by the Hon. Moses Hallett without any examination, upon the statement being made that it was prepared by the said Lillian Griffin, who had reported the case; that not until since the first day of the present month did affiant discover that said bill did not contain the formal recital that the same contained all the
185 evidence given upon said trial; that thereupon affiant, upon due notice, appealed to the circuit court to have said bill amended so as to contain this recital; which said motion was overruled on the sole ground that, as the term had expired and the cause was pending in the appellate court, the circuit court had no power to grant said amendment without the consent of counsel upon the other side; that thereupon affiant applied for such consent; to which application he received the letters set forth in the printed brief filed in support of this motion, and which original letters are herewith filed, denying such consent; that as a matter of fact the bill of exceptions does contain all the evidence given upon said trial; that affiant has entered into stipulations with the counsel upon the other side of this cause that a large number of causes pending in the State and Federal courts, brought upon coupons taken from the entire issue of bonds involved in this case, shall abide the event in this cause, provided only that the merits and justice of the cases are fully passed upon by this court; that affiant believes that the entire merits of this case cannot be passed upon in the presence of any false presumptions that evidence was given upon the trial of said cause which was not given, and that therefore other cases will have to be tried and brought to this court before a fair and full adjudication can be made as to the validity of said issue of bonds unless the amendment asked for be allowed.

H. B. JOHNSON.

Subscribed and sworn to before me this 26th day of January, A. D. 1897.

[SEAL.]

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Endorsed: In the United States circuit court of appeals, eighth circuit, December term, 1896. E. H. Rollins & Sons, plaintiff in error, *vs* The Board of County Commissioners of the County of Gunnison, Colorado, defendant in error. No. 856. Affidavit of H. B. Johnson. Filed Jan. 26, 1897. John D. Jordan, clerk.

186 (*Affidavit of Lillian Griffin.*)

And on the twenty-sixth day of January, A. D. 1897, an affidavit of Lillian Griffin was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

UNITED STATES OF AMERICA, }
District of Colorado, } ss:

In the Circuit Court of the United States for the District of Colorado.

E. H. ROLLINS AND SONS, Complainants,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF GUNNISON County, Colorado, Defendant.
No. 3201. Law. Affidavit.

STATE OF COLORADO, }
County of Arapahoe, } ss:

Lillian Griffin, being first duly sworn, upon her oath doth depose and say that she is now and for some time last past has been regularly engaged in the reporting of the evidence in causes in the Federal court in the city of Denver, county of Arapahoe, and State of Colorado.

That in the above-entitled cause she was employed to take the testimony introduced in evidence, and that she attended the trial of said cause and heard the evidence and took the same down in shorthand and numbered the exhibits filed in the above-entitled cause, and that after the conclusion of the testimony she extended said shorthand notes and attached to such extension full, true, complete, and correct copies of all exhibits in said cause, and that the evidence taken by her and extended, as aforesaid, accompanied by such copies of said exhibits, was signed and sealed as a bill of exceptions in said cause by the Hon. Moses Hallett, who pre-
187 sided on the trial thereof, and the same was afterwards lodged in the clerk's office of the United States circuit court, at the city of Denver, and that the same contains, fully, completely, and accurately, each and every item of evidence introduced upon the trial of said cause, and that she now has in her possession said shorthand notes, which can be produced, to verify said bill of exceptions.

And further affiant saith not.

LILLIAN GRIFFIN.

Subscribed and sworn to before me this 16th day of January, A. D. 1897.

Commission expires Dec. 4, 1897.

[SEAL.] E. LILLIAN McKERCHER,
Notary Public.

Endorsed: In the United States circuit court of appeals, eighth circuit, December term, 1896. E. H. Rollins and Sons, complainants, *vs.* The Board of County Commissioners of Gunnison County, Colorado, defendant. No. 856. Affidavit of Lillian Griffin. Filed Jan. 26, 1897. John D. Jordan, clerk.

(*Letters in Support of Motion.*)

And on the twenty-sixth day of January, A. D. 1897, there *was* filed in the clerk's office of said circuit court of appeals in said cause letters in support of motion in the words and figures following:

JANUARY 15TH, 1897.

H. B. Johnson, Esq., attorney-at-law, Cooper building, city.

DEAR SIR: We received the enclosed communication this morning from Thomas C. Brown, attorney-at-law, Gunnison, Colo., and who personally represents the county commissioners in the Gunnison County cases. You will see from his statement that he is unwilling to stipulate for any additions to the record in the Rollins case. We are compelled to be governed by his decision in the matter and do not know but what on the whole he is correct,
188 in view of the fact that we represent the people of the county and ought not by personal agreements to jeopardize their rights. It will be impossible, therefore, for us to sign any stipulation whereby anything can be added to or any change made in the bill of exceptions on file in the case as it now exists.

Very truly yours, THOMAS, BRYANT & LEE.

GUNNISON, COLORADO, *Jan. 14th*, 1897.

Messrs. Thomas, Bryant & Lee, Denver, Colo.

GENTLEMEN: Your favor of the 11th, enclosing one from Mr. H. B. Johnson, of same date, relative to case of E. H. Rollins & Sons *vs.* Gunnison County, at hand, and in reply will say that I have talked with the county commissioners about the matter, and they are unwilling to consent to the amendment desired by Mr. Johnson, and, in view of the fact that we represent, indirectly, the whole people of the county and might be censured for such course, I would be unwilling to agree to the amendment, and we will have to let the matter go as it is, and, whatever may be the result in the other cases, we will abide by it.

Yours truly, THOS. C. BROWN.

Endorsed: No. 856. E. H. Rollins & Sons, appellant, *vs.* B'd Commissioners of Gunnison Co. Letters in support of motion to amend. Filed Jan. 26, 1897. John D. Jordan, clerk.

189 (*Motion to Amend Submitted on Briefs.*)

And on the twenty-sixth day of January, A. D. 1897, in the record of the proceedings of said circuit court of appeals is an entry of submission of the motion to amend in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

TUESDAY, *January* 26, 1897.

E. H. ROLLINS AND SONS, Plaintiff in Error,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Gunnison, Defendant in Error. } No. 856.

In error to the circuit court of the United States for the district of Colorado.

The motion of plaintiff in error for leave to have amended the bill of exceptions in this cause having been called for hearing, the same was submitted to the court upon briefs and taken under advisement.

(*Opinion on Motion to Amend.*)

And on the twenty-ninth day of January, A. D. 1897, an opinion of said circuit court of appeals on motion to amend bill of exceptions was filed in said cause in the words and figures following:

190 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1896.

E. H. ROLLINS & SON-, Plaintiffs in Error,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Gunnison, Colorado, Defendant in Error. } No. 856.

In error to the circuit court of the United States for the district of Colorado.

Mr. Willard Teller for the motion.
Mr. W. H. Bryant, contra.

Before Sanborn and Thayer, circuit judges, and Lochren, district judge.

Per Curiam:

A motion is made in this case in behalf of the plaintiffs in error to enter an order authorizing the circuit court of the United States for the district of Colorado to amend the bill of exceptions, as it appears in the record, so as to show whether the same does or does not contain all the evidence produced on the trial of the case. This court has heretofore decided in *Lincoln National Bank v. Perry*, 32 U. S. App., 15; 14 C. C. A., 273; 66 Fed. Rep., 887, that a trial court has the power to correct its record so as to make it speak the truth when by mistake it speaks an untruth, even after the lapse of the term at which the judgment was rendered, and even after the record in the case has been removed to an appellate court by a writ of error. See also *Walker v. State*, 102 Ind., 502; *Seymour v. Harrow Company*, 81 Ala., 250; *Whiting v. Society*, 8 C. C. A., 558. It results from this rule that the alleged mistake that is said to

have been made in formulating the bill of exceptions can be corrected by the trial court without the leave or sanction of this court, provided it is a mistake falling within the rule aforesaid such as may be corrected by amendment. No order of this court is necessary to enable the circuit court to amend the record in the respect desired, if we assume that the correction is one which the circuit court was authorized to make after the lapse of the term at which the judgment was rendered, and no order made by this court would confer any authority upon the circuit court in addition to that which it now has. It was held by the supreme court of
191 Indiana in *Seig v. Long*, 72 Ind., 18, that the power to amend a bill of exceptions by adding thereto a statement that it contained all the evidence produced at the trial cannot be exercised by the trial court after the lapse of the term at which the judgment was rendered, and the bill of exceptions was signed, sealed and filed. If this be so, if the amendment sought is of such nature that the power to make it has been lost by the trial court, by the lapse of the term at which the final judgment was rendered, then it is obvious that this court cannot restore the lost power by any order which it may now make. It is the function of this court to review the record of the trial court, and to determine whether it discloses a reversible error; it is not within its province to enlarge the authority of the trial court with respect to settling bills of exceptions, or to enlarge its power to amend them when once signed and filed. We think, therefore, that in either aspect of the case, the order which we are asked to enter is one which we ought not to make, because it would not alter the power or duty of the trial court in the matter of making the amendment in any respect.

The motion must accordingly be denied.

Filed January 29, 1897.

192 (*Order Denying Motion to Amend Bill of Exceptions.*)

And on the twenty-ninth day of January, A. D. 1897, in the record of the proceedings of said circuit court of appeals is an order denying the motion to amend bill of exceptions in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

FRIDAY, *January* 29, 1897.

E. H. ROLLINS AND SONS, Plaintiff in Error,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Gunnison, Defendant in Error. } No. 856.

In error to the circuit court of the United States for the district of Colorado.

The motion filed by the plaintiff in error for leave to have amended the bill of exceptions in this cause heretofore submitted

having been duly considered by the court, it is now ordered that said motion be, and the same is, denied.

(*Appearance for Plaintiff in Error.*)

And on the second day of February, A. D. 1897, an appearance of counsel for plaintiff in error was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

E. H. ROLLINS AND SONS, Plaintiff in Error,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Gunnison. } No. 856.

193 The clerk will enter my appearance as counsel for the plaintiff in error.

E. F. RICHARDSON.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term, 1896. No. 856. E. H. Rollins and Sons, pl'ff in error, *vs.* The Board of County Commissioners of the County of Gunnison. Appearance. Filed Feb 2, 1897. John D. Jordan, clerk. E. F. Richardson, counsel for pl'ff in error.

(*Appearance for Defendant in Error.*)

And on the second day of February, A. D. 1897, an appearance of counsel for defendant in error was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

E. H. ROLLINS AND SONS, Plaintiff in Error,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Gunnison. } No. 856.

The clerk will enter my appearance as counsel for the defendant in error.

THOS. C. BROWN.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term, 1896. No. 856. E. H. Rollins and Sons, pl'ff in error, *vs.* The Board of County Commissioners of the County of Gunnison. Appearance. Filed Feb. 2, 1897. John D. Jordan, clerk. Thos. C. Brown, counsel for def't in error.

194 (*Argument Commenced.*)

And on the second day of February, A. D. 1897, in the record of the proceedings of said circuit court of appeals is an entry in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

TUESDAY, *February* 2, 1897.

E. H. ROLLINS AND SONS, Plaintiff in Error,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Gunnison, Defendant in Error. } No. 856.

In error to the circuit court of the United States for the district of Colorado.

This cause having been called for hearing in its regular order, argument was commenced by Mr. E. F. Richardson, in behalf of the plaintiff in error, continued by Mr. Thomas C. Brown and Mr. C. S. Thomas, for the defendant in error, and by Mr. H. B. Johnson, for the plaintiff in error, but, not being concluded at the hour of adjournment, further argument was postponed until tomorrow morning.

(*Submission.*)

And on the third day of February, A. D. 1897, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1897.

WEDNESDAY, *February* 3, 1897.

E. H. ROLLINS AND SONS, Plaintiff in Error,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Gunnison, Defendant in Error. } No. 856.

195 In error to the circuit court of the United States for the district of Colorado.

This cause having been called this day for further hearing, thirty minutes additional time was granted to counsel for plaintiff in error to conclude the argument in this cause, and argument was concluded by Mr. H. B. Johnson, for the plaintiff in error. Thereupon the cause was submitted to the court upon the transcript of record from said circuit court and the briefs of counsel filed herein.

(*Opinion.*)

And on the third day of May, A. D. 1897, an opinion of said United States circuit court of appeals was filed in said cause in the words and figures following:

196 United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1897.

E. H. ROLLINS & SONS, Plaintiff in Error,
vs.
BOARD OF COUNTY COMMISSIONERS OF the County of Gunnison, Defendant in Error.

No 856. In Error to the Circuit Court of the United States for the District of Colorado.

Mr. H. B. Johnson (Mr. Willard Teller and Mr. E. F. Richardson were with him on the brief) for the plaintiff in error.

Mr. C. S. Thomas and Mr. T. C. Brown (Mr. J. R. Hinkle, Mr. W. H. Bryant and Mr. H. H. Lee were with them on the brief) for the defendant in error.

Before Sanborn and Thayer, circuit judges, and Lochren, district judge.

Statement.

This was a suit which was brought by E. H. Rollins & Sons, a corporation of New Hampshire, the plaintiff in error, against The Board of County Commissioners of the County of Gunnison, State of Colorado, the defendant in error. The action was founded on coupons attached to ten county bonds, each of which was in the following form:

"Series A.

No. —. $1,000.

UNITED STATES OF AMERICA,
County of Gunnison, State of Colorado.

Funding Bond.

The County of Gunnison, in the State of Colorado, acknowledges itself indebted, and promises to pay to —— —— or bearer, one thousand dollars lawful money of the United States for value received, redeemable at the pleasure of said county after ten years, and absolutely due and payable twenty years from the date hereof at the office of the treasurer of said county in the city of Gunnison, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, on the first day of March and the first day of September in each year at the office of the county treasurer aforesaid, or at the Chase national bank in the city of New York, at the option of the holder, upon the presentation and surrender of the annexed coupons, as they severally become due.

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This bond is issued by the Board of County Commissioners of said Gunnison County, in exchange at par for valid floating indebtedness of the said county, outstanding prior to September 2, 1882, under and by virtue of, and in full conformity with the provisions of an act of the General Assembly of the State of Colorado, entitled 'An act to enable the several counties of the State to fund their floating indebtedness,' approved February 21, 1881; and it is hereby certified that all the requirements of law have been fully complied with by the proper officers in the issuing of this bond. It is further certified that the total amount of this issue does not exceed the limit prescribed by the constitution of the State of Colorado, and that this issue of bonds has been authorized by a vote of the majority of the duly qualified electors of the said county of Gunnison, voting on the question at a general election duly held in said county on the 7th day of November, A. D. 1882. The bonds of this issue are comprised in three series, designated A, B and C, respectively. The bonds of 'Series A,' being for the sum of one thousand dollars each; those of 'Series B,' for the sum of five hundred dollars each, and those of 'Series C,' for the sum of one hundred dollars each; this bond is one of 'Series A.'

The faith and credit of the County of Gunnison are hereby pledged for the punctual payment of the principal and interest of this bond.

In testimony whereof the Board of County Commissioners of said Gunnison County have caused this bond to be signed by their chairman, countersigned by the county treasurer and attested by the county clerk, under the seal of the county, this first day of December, A. D. 1882."

The coupons attached to said bonds were in the following form:

$40.00. $40.00.

County of Gunnison, in the State of Colorado,

Will pay the bearer forty dollars at the office of the county treasurer in the city of Gunnison, or at the Chase national bank in the city of New York, on the first day of March, 188–, being six months' interest on funding bond.

No. —. Series A.

——— ———,

County Treasurer."

The answer to the complaint, which was very lengthy, pleaded, in substance, that the bonds to which the coupons in suit were attached, had been issued in an attempt to fund a pretended floating indebtedness of the county of Gunnison, which was evidenced by county warrants; that said floating indebtedness was contracted under, and subject to, the provisions of section 6, article eleven of the constitution of Colorado (Laws of Colorado, 1877, p. 62); that when said indebtedness was contracted and said warrants were issued the county of Gunnison already had an outstanding indebtedness exceeding $6 per $1,000 of the assessed valuation of the

property in the county, exclusive of debts contracted before the adoption of the constitution, and exclusive of debts contracted for erecting public buildings and in making and repairing roads and bridges; that the indebtedness to fund which said bonds had
198 been issued, when such indebtedness was created, or pretended to be created, was in excess of the amount of lawful indebtedness which could be created by the county of Gunnison under the provisions of section 6, article eleven, of the constitution of the State, and that the bonds issued to fund warrants representing such illegal indebtedness, were themselves wholly illegal and void.

The act of February 21, 1881, referred to in the foregoing bond contained, among others, the following provision:

SECTION 1. It shall be the duty of the county commissioners of any county having a floating indebtedness exceeding ten thousand dollars, upon the petition of fifty of the electors of said counties (county) who shall have paid taxes upon property assessed to them in said county in the preceding year, to publish for the period of thirty days in a newspaper published within said county, a notice requesting the holders of the warrants of such county to submit in writing to the board of county commissioners, within thirty days from the date of the first publication of such notice, a statement of the amount of the warrants of such county which they will exchange at par, and accrued interest, for the bonds of such county, to be issued under the provisions of this act, taking such bonds at par. It shall be the duty of such board of county commissioners at the next general election occurring after the expiration of thirty days from the date of the first publication of the notice aforementioned upon the petition of fifty of the electors of such county who shall have paid taxes upon property assessed to them in said county in the preceding year, to submit to the vote of the qualified electors of such county who shall have paid taxes on property assessed to them in said county in the preceding year, the question whether the board of county commissioners shall issue bonds of such county under the provisions of this act, in exchange at par for the warrants of such county, issued prior to the date of the first publication of the aforesaid notice; or they may submit such question at a special election, which they are hereby empowered to call for that purpose at any time after the expiration of thirty days from the date of the first publication of the notice aforementioned, on the petition of fifty qualified electors as aforesaid; and they shall publish for the period of at least thirty days immediately preceding such general or special election, in some newspaper published within such county, a notice that such question will be submitted to the duly qualified electors as aforesaid, at such election. The county treasurer of such county shall make out and cause to be delivered to the judges of election in each election precinct in the county, prior to the said election, a certified list of the tax-payers in such county who shall have paid taxes upon property assessed to them in such county in the preceding year; and no person shall vote upon the question of the funding of the county indebtedness, unless his name shall appear upon such list, nor unless he shall have paid all county taxes assessed against

him in such county in the preceding year. If a majority of the votes lawfully cast upon the question of such funding of the floating county indebtedness shall be for the funding of such indebtedness, the board of county commissioners may issue to any person or corporation holding any county warrant or warrants issued prior to the date of the first publication of the aforementioned notice, coupon bonds of such county in exchange therefor at par. No
199 bonds shall be issued of less denomination than one hundred dollars, and if issued for a greater amount, then for some multiple of that sum, and the rate of interest shall not exceed eight per cent. per annum. The interest to be paid semi-annually at the office of the county treasurer, or in the city of New York, at the option of the holders thereof. Such bonds to be payable at the pleasure of the county after ten years from the date of their issuance, but absolutely due and payable twenty years after date of issue. *The whole amount of bonds issued under this act shall not exceed the sum of the county indebteaness at the date of the first publication of the aforementioned notice, and the amount shall be determined by the county commissioners, and a certificate made of the same and made a part of the records of the county; and any bond issued in excess of said sum shall be null and void;* and all bonds issued under the provisions of this act shall be registered in the office of the State auditor, to whom a fee of ten cents shall be paid for recording each bond." Laws of Colorado, 1881, pp. 85, 86, 87.

Section 6, article eleven, of the constitution of Colorado, referred to in the defendant's answer, is as follows:

"No county shall contract any debt by loan in any form, except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges; and such indebtedness contracted in any one year shall not exceed the rates upon taxable property in such county, following to wit: Counties in which the assessed valuation of taxable property shall exceed five millions of dollars, one dollar and fifty cents on each thousand dollars thereof. Counties in which such valuation shall be less than five millions of dollars, three dollars on each thousand dollars thereof. And the aggregate amount of indebtedness of any county for all purposes, exclusive of debts contracted before the adoption of this constitution, shall not at any time exceed twice the amount above herein limited, unless when in manner provided by law, the question of incurring such debt shall, at a general election, be submitted to such of the qualified electors of such county, as in the year last preceding such election, shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favor of incurring the debt; but the bonds, if any be issued therefor, shall not run less than ten years, and the aggregate amount of debt so contracted shall not at any time exceed twice the rate upon the valuation last herein mentioned; provided that this section shall not apply to counties having a valuation of less than one million of dollars." Laws of Colorado, 1877, p. 62.

The case was tried to a jury, and at the conclusion of the trial the

court directed a verdict for the defendant. To reverse the judgment entered on such verdict, the plaintiff below sued out a writ of error.

THAYER, *J.*, after stating the case as above, delivered the opinion of the court:

Inasmuch as the bill of exceptions fails to show that it contains all the evidence which was produced at the trial of the case, the point is well made, in behalf of the defendant, that the action of the lower court in directing a verdict for the defendant cannot be reviewed. Nor can any of the exceptions which were taken to the charge be reviewed, for, while the charge was somewhat
200 lengthy, yet as it concluded with a peremptory direction to the jury to return a verdict for the defendant, it must be treated by this court precisely as it would have been had the trial court, without any explanation of its views, simply directed a finding for the defendant. When a peremptory instruction is given, either in favor of the plaintiff or the defendant, the only question with respect to the charge which is open for consideration by an appellate tribunal, is whether the direction to find for the one party or the other, when considered in the light of the pleadings and *all* the evidence, was right, and if the bill of exceptions fails to disclose that it contains all the evidence, *that* question, for obvious reasons, cannot be noticed. *Taylor-Craig Corporation v. Hage*, 32 U. S. App., 548; 16 C. C. A., 339; *United States Mutual Accident Association v. Robinson*, 36 U. S. App., 690; 20 C. C. A., 262.

It results from this view that the only question which can be considered on the present record, is whether errors were committed in the admission or exclusion of testimony. The first error of this sort which is assigned and argued, consists in the action of the trial court in admitting in evidence the assessment-lists of the county of Gunnison for the years 1880, 1881 and 1882, which were offered by the defendant. An examination of the record shows, however, that while these assessment lists were objected to generally for immateriality when they were offered, yet no exception was saved when they were admitted. For this reason the objection to the assessment-lists was waived, and cannot be noticed.

In addition to the assessment-lists last mentioned, the defendant county also offered in evidence three statements, purporting to be financial statements of Gunnison county, Colorado, for the six months ending respectively on December 31, 1881, June 30, 1882, and December 30, 1882. To each of the aforesaid statements was appended a certificate of the board of county commissioners, to the effect that it was a true, full, and correct statement of the financial condition of Gunnison county for the period which the statement purported to cover. Each statement when offered in evidence also bore a certificate made by the county clerk of Gunnison county, under his hand and seal, to the effect that the aforesaid statement was a full, true, and correct copy of the financial statement of Gunnison county for the period which it purported to cover, as the same appeared "in the records of Gunnison county in Book of Statements," at certain designated pages. These statements showed the total indebted-

ness of Gunnison county, consisting of bonds and warrants, to have been as follows: On December 31, 1881, $77,559.01; on June 30, 1882, $118,691.49, and on December 30, 1882, $284,763.05. They also showed on what account debts had been incurred by the county during the period covered thereby, and the names of many persons and firms in whose favor warrants had been drawn. The financial statements in question seem to have been prepared by the board of county commissioners for the purpose of complying with section 30 of an act passed by the legislature of the State of Colorado on March 24, 1877, entitled "An act concerning counties, county officers and county government, and repealing laws on these subjects." Laws of Colorado, 1877, pp. 218, 237. The 30th section of said act, in substance, required the various boards of county commissioners throughout the State to make semi-annual financial state-
201 ments at their regular sessions in January and July of each year, showing, among other things, the total indebtedness of their respective counties at such periods, of what the indebtedness consisted, and the rate of interest paid thereon, which statements were required to be entered of record by the clerk of the county board in a book kept for that purpose, and to be published in some weekly paper, or to be posted in three conspicuous places in the county, if no newspaper was published therein.

Another document which was offered in evidence by the defendant was a duly certified copy of the record of proceedings of the Board of County Commissioners of Gunnison County, which had been taken under the act of February 21, 1881, quoted in the statement, by virtue of which proceedings certain floating indebtedness of the county had been funded, and the bonds in controversy had been issued. These proceedings contained, among other things, a certificate made by the board of county commissioners showing that the floating indebtedness of the county of Gunnison was $174,115 29 on August 21, 1882, when the first publication was made of the notice to warrant-holders, which was required to be given by the provisions of said act.

The plaintiff objected to the admission of the financial statements and the record of the proceedings of the board, but they were admitted in evidence over such objection, and an exception was duly saved to their admission. This exception presents the question of chief importance which arises upon the record.

We are constrained to hold that the financial statements to which reference has been made were not admissible in evidence against an innocent purchaser for value, before maturity, of funding bonds containing such recitals as those contained in the bonds in controversy. The funding act of February 21, 1881, made it the duty of the board of county commissioners to determine the amount of the county indebtedness, and make a certificate thereof, and spread the same upon the records of the county, as one of the initial steps toward an issuance of funding bonds. The record discloses that such a determination was made and duly entered of record before the bonds in controversy were issued; and such determination having been made by the board of county commissioners in obedi-

ence to the mandate of the statute, it is certainly entitled to as much credit as the semi-annual statements made by the same board in pursuance of the provisions of the act of March 24, 1877. Indeed, when it is borne in mind that the board was required to determine the true amount of the county debt, as of the date of the first publication of the notice to warrant-holders, if the county proposed to issue funding bonds, and when it is also borne in mind that the indebtedness of the county was liable to great fluctuations between the dates of the several semi-annual statements—it is fair to presume that the statement of the total county debt for which provision was made in the funding act, was the only authentic statement of such indebtedness which the legislature intended should be consulted, either by warrant-holders, or other persons who might be concerned in the issuance of funding bonds. In the case of *Sutliff v. Lake County Commissioners*, 147 U. S., 230, it was held that a purchaser of bonds issued by a county of Colorado under section twenty-one of the act of March 24, 1877, *supra*, was charged with the duty of examining statements of the financial condition of the county which had been made by the board of county
202 commissioners, pursuant to section 30 of the *same act*, notwithstanding a recital contained in the bonds "that all the provisions of said act have been fully complied with by the proper officers in the issuing of this bond." But the two cases, the one at bar and that case, are not parallel in this, that the bonds involved in the present suit were not issued under the act of March 24, 1877, but under an act which, in the very first section conferring the power to issue funding bonds, also made provision for a judicial determination of the amount of the county indebtedness, before such bonds were issued, and also required such determination to be made as of the date of the proposed issue. We do not understand the decision in the Sutliff case to go to the extent of holding that a bond-purchaser must, at his peril, examine every record of county indebtedness which has been made by county officials, pursuant to the provisions of a statute, with a view of satisfying himself that the constitutional limit of indebtedness has not been exceeded. Even if such is the rule, where, in cases like the Sutliff case, the bonds do not contain an express recital that the issue does not exceed the constitutional limit, yet it ought not to be applied to a case like the one in hand where the bonds do contain a certificate "that the total amount of this issue does not exceed the limit prescribed by the constitution of the State of Colorado." When, as in the present case, it appears that there are two acts passed at different times, each making provision for an official statement of the county indebtedness to be made at different times, one of which statements is required to be made with express reference to an issue of bonds and as one of the preliminary steps to that end, we think it is reasonable to conclude that a purchaser of the bonds is, at most, only charged with the duty of examining the latter statement. If a discrepancy exists between the two statements, it is clear, we think, that that statement should govern and control which was made with express reference to an issue of bonds and presumably for the

information of the bondholder, and that the bondholder should only be charged with the duty of examining the statement on which he has a right to rely.

It is contended, on the part of the plaintiff, that a purchaser of the funding bonds in controversy, in view of the recitals therein contained, was not even chargeable with notice of the certificate made by the board of county commissioners, showing the county indebtedness on August 21, 1882, to have been $174,115.29; but we have not found it necessary to consider that proposition, and shall express no opinion thereon. It may be conceded, though not decided, that a purchaser of the bonds in question was affected with notice of all the facts disclosed by the record of the proceedings of the board, which culminated in the issuance of the bonds; but notwithstanding this concession, we are of opinion that the record made by the board of county commissioners disclosed no facts rendering the bonds void in the hands of an innocent purchaser for value. These bonds contained a recital, heretofore quoted, to the effect that the amount issued did not exceed the constitutional limit of indebtedness, and the certificate made by the board showing the total county indebtedness, as of August 21, 1882, did not pretend to state when that indebtedness was created. Moreover, the bonds on their face purported to be funding bonds issued "for valid
203 floating indebtedness" which would not create a new debt, assuming the warrants for which they were issued to have been valid, but would simply change the form of an existing indebtedness. *In re* State Bonds, 18 Atlantic Rep. (Me.), 291; *Powell v. City of Madison*, 107 Ind., 110; *City of Los Angeles v. Teed*, 44 Pac. Rep. (Cal.), 580; *Commissioners of Marion County v. Commissioners of Harvey County*, 26 Kansas, 181, 201; *Hotchkiss v. Marion et al.*, 12 Mont., 218; *Miller v. School Dist. No. 3*, 39 Pac. Rep. (Wyoming), 879. A purchaser of the bonds, therefore, who examined one of them, or the whole issue, for that matter, in the light of the constitutional provision and the certificate made by the board, would have been unable to say that the aforesaid recital was false, and that the bonds were void, for the reason that the entire debt certified to by the board might have been created before the assessed value of county property reached the million-dollar mark, until which time there were no restrictions upon the power of the county to contract debts. If, upon any theory, the bonds might be valid, notwithstanding the fact that the county debt was $174,155.29 on August 21, 1882, a purchaser of the bonds was entitled to presume that such was the fact, that the recitals were true, and that the constitution had not been violated. *National Life Insurance Co. v. Board of Education*, 27 U. S. App., 244; 10 C. C. A., 63, 7, and cases there cited; *Chaffee County v. Potter*, 142 U. S., 355, 363, 364; *Evansville v. Dennett*, 161 U. S., 434, 443. It results from this view of the case, that as against a *bona fide* holder of the funding bonds in controversy, the certified copy of the proceedings of the board of county commissioners, which was admitted in evidence, was at least immaterial testimony.

Another item of proof which was admitted by the trial court,

over an objection duly made by the plaintiff, consisted of three lists of county warrants, which had been surrendered to the county by the owners and holders thereof when the ten funding bonds which are involved in the present suit were issued. With reference to these lists it is sufficient to say, that on three occasions a large number of warrants appear to have been surrendered to the county in exchange for funding bonds, and that the bonds in suit, being numbers 9 to 13, both inclusive; 63 to 66, both inclusive, and number 98, formed a part of the three issues of bonds which had thus been put in circulation. It did not appear, however, that any particular warrants had been exchanged for any particular bond, but that a large number of warrants, in one instance warrants amounting to $49,896, had been exchanged for an equivalent sum in bonds. This testimony appears to have been offered for the purpose of showing, by the production of the warrants and an examination of their dates, that the indebtedness represented by the funding bonds in suit had been created after the constitutional inhibition against contracting debts beyond a certain amount had become applicable to Gunnison county, by reason of its assessed valuation having reached an amount exceeding one million dollars. That limit appears to have been attained for the first time by the assessment made for the year 1881. It follows from the views which we have heretofore expressed, that the lists of warrants in question were inadmissible against a *bona fide* purchaser of bonds, to contradict and overcome the recitals which the bonds in controversy contain.

204 A purchaser of such securities for value, in the open market, can neither be expected nor required to examine the warrants issued for the original indebtedness, with a view of ascertaining when the debt was contracted, especially when the bonds contain such explicit representations as the bonds in suit contain. No case, we believe, has ever imposed a burden of that kind upon the bondholder.

We have thus far considered the admissibility of the foregoing testimony from the standpoint occupied by an innocent purchaser of the bonds, for value, and before maturity, but as the question is raised whether the plaintiff corporation is armed with the rights of a *bona fide* holder, as to any of the bonds in suit, it becomes necessary to notice that contention. The testimony contained in the present record, shows, we think, without contradiction, that the plaintiff was a *bona fide* holder when the suit was brought, of at least five of the bonds which are involved in the present controversy, because it holds the title of Joseph Stanley, who was himself an innocent purchaser of said bonds before maturity, for the price of ninety-eight cents on the dollar. The rights which Stanley acquired by virtue of such purchase inure to the plaintiff, by virtue of its purchase of the bonds from Stanley in June, 1892, and this without reference to any knowledge which the plaintiff may have had at the latter date, affecting the validity of the securities. A *bona fide* holder of commercial paper is entitled to transfer to a third party all the rights with which he is vested, and the title so acquired by his indorsee cannot be affected by proof that the indorsee

was acquainted with the defenses existing against the paper. *Commissioners of Marion County v. Clark*, 94 U. S., 278, 286; *Hill v. Scotland County*, 34 Fed. Rep., 208; Daniels on Negotiable Instruments, sec. 803, and cases there cited.

The rights of the plaintiff with respect to the remaining five bonds, which it also purchased from Stanley, may be different, as Stanley appears to have received the remaining five bonds direct from the county of Gunnison, in exchange for warrants which he owned and held, instead of purchasing the bonds in the open market. Whether the plaintiff acquired the last-mentioned bonds under circumstances which constitute it a *bona fide* holder, is a question which may require the consideration of a jury, and we shall not undertake to decide it on the facts preserved in the present record. The testimony above considered appears to have been admitted by the trial court on the assumption that it was competent, even as against a *bona fide* purchaser of funding bonds, for the purpose of impeaching the bonds, and as we cannot concur in that view, the judgment of the circuit court must be *reversed*, and the cause remanded for a new trial. It is so ordered.

Filed May 3, 1897.

205 (*Judgment.*)

And on the third day of May, A. D. 1897, in the record of the proceedings of said United States circuit court of appeals is an entry of judgment in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

MONDAY, *May* 3, 1897.

E. H. ROLLINS AND SONS, Plaintiff in Error,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Gunnison, Defendant in Error. } No. 856.

In error to the circuit court of the United States for the district of Colorado.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Colorado and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, reversed with costs, and that E. H. Rollins and Sons have and recover against the Board of County Commissioners of the County of Gunnison the sum of four hundred eighty-four and $\frac{10}{100}$ dollars for its costs in this behalf expended, and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said circuit court with directions to grant a new trial.

May 3, 1897.

(*Petition for Stay of Mandate.*)

nd on the twenty-eighth day of June, A. D. 1897, a petition of endant in error for an order staying mandate was filed in the k's office of said circuit court of appeals in said cause in the ds and figures following:

he United States Circuit Court of Appeals for the Eighth Circuit.

E. H. ROLLINS & SONS, Plaintiff in Error,
vs.
E BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, Defendant in Error.

omes now the defendant in error above named and respectfully tions this honorable court to enter an order staying the mandate he above-entitled cause until the 26th day of October, A. D. 1897, the purpose of permitting the defendant in error to apply to the preme Court of the United States for a writ of certiorari.

THOMAS, BRYANT & LEE,
Att'ys for Def't in Error.

Endorsed: 856. Circuit court of appeals for the 8th circuit. H. Rollins & Sons *vs.* The Board of Co. Commissioners of Gunon Co. Petition of defendant in error for an order staying mane. Filed Jun- 28, 1897. John D. Jordan, clerk. Thomas, ant & Lee, attorneys for def't in error.

(*Order Staying Mandate.*)

nd on the first day of July, A. D. 1897, in the record of the prodings of said circuit court of appeals is an order staying mandate aid cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

THURSDAY, *July* 1, 1897.

E. H. ROLLINS AND SONS, Plaintiff in Error,
vs.
E BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Gunnison, Defendant in Error. No. 856.

error to the circuit court of the United States for the district of Colorado.

This cause came on this day to be heard upon the motion of the endant in error for an order staying the mandate in the above-itled cause until the 26th day of October, A. D. 1897, for the pur-

pose of presenting an application to the Supreme Court of the United States for a writ of certiorari.

On consideration whereof it is now here ordered that said motion be, and the same is hereby, granted, and the clerk of this court is hereby directed to withhold the mandate in said cause until October 26, A. D. 1897.

July 1, 1897.

(Signed) AMOS M. THAYER,
U. S. Circuit Judge for the Eighth Circuit.

208 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing 207 pages contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinions of said circuit court of appeals, in the case of E. H. Rollins and Sons, plaintiff in error, *vs.* The Board of County Commissioners of the County of Gunnison, defendant in error, No. 856, May term, 1897, as the same remain upon file and of record in my office.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this tenth day of August, A. D. 1897.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

209 UNITED STATES OF AMERICA, *ss:*

In the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

E. H. ROLLINS & SONS, Plaintiff in Error,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, Colorado, Defendant in Error.

Error to the circuit court of the United States for the district of Colorado.

The Supreme Court of the United States, upon the application of the above-named defendant in error, having granted a writ of certiorari to the judges of the United States circuit court of appeals for the eighth circuit, by which said court is commanded to send, without delay, to the said Supreme Court the record and proceedings in said cause, and a certified transcript of said record and proceedings having already been filed in the office of said clerk of said court, upon which said application for writ of certiorari was made: now, therefore, it is hereby stipulated and agreed that the said certified

transcript now on file as aforesaid may be, and the same is hereby, to be taken as return to the said writ, and that no other or further certified transcript of the record for that purpose shall be required.

Dated at Denver, in the State of Colorado and circuit aforesaid, this — day of October, A. D. 1897.

H. B. JOHNSON,
EDMUND F. RICHARDSON,
Att'ys for Pl'ff in Error.
THOS. C. BROWN,
C. S. THOMAS,
W. H. BRYANT,
H. H. LEE,
Att'ys for Def't in Error.

Endorsed; United States ct. court of appeals, eighth judicial circuit. E. H. Rollins & Sons *vs.* Board Co. Comm'rs Gunnison County, Colo. Stipulation as to return to writ of certiorari. Filed Oct. 27, 1897. John D. Jordan, clerk.

210 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals, eighth circuit, do hereby certify that the foregoing page contains a true copy of the stipulation as to return to writ of certiorari from the Supreme Court of the United States in the case of E. H. Rollins and Sons, plaintiff in error, *vs.* The Board of Commissioners of Gunnison County, Colorado, No. 856, May term, 1897, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this 29th day — October, A. D. 1897.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals, Eighth Circuit.

211 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which E. H. Rollins & Sons is plaintiff in error and The Board of County Commissioners of the County of Gunnison, Colorado, is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the district of Colorado, and we being willing for certain reasons that the said cause and the record and proceedings therein

should be certified by the said circuit court of appeals and
212 removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 19th day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

213 [Endorsed:] Case No. 16,688. Supreme Court of the United States. No. 178, October term, 1898. The Board of County Comm'rs of Gunnison Co., Col., *vs.* E. H. Rollins & Sons. Writ of certiorari and return. Filed Oct. 27, 1897. John D. Jordan, clerk. Filed Nov. 1, 1897.

Return to Writ of Certiorari.

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, in obedience to the command of the within writ and in pursuance of the stipulation of the parties, a true copy of the original of which is hereto attached, do hereby certify that the transcript of record furnished, with the application for a writ of certiorari to the Supreme Court of the United States in the within-named cause, contains a full, true, and complete transcript of the record and all things concerning the same, as full, true, and complete as the originals of the same now remain on file and of record in my office.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of St. Louis, Missouri, this twenty-ninth day of October, A. D. 1897.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Endorsed on cover: Case No. 16,688. U. S. C. C. of appeals, 8th circuit. Term No., 178. The Board of County Commissioners of the County of Gunnison, State of Colorado, petitioner, *vs.* E. H. Rollins & Sons. Filed October 11, 1897.

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IN

The Supreme Court

OF THE

UNITED STATES.

October Term, A. D. 1897.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON AND STATE OF COLORADO,

Petitioner,

vs.

E. H. ROLLINS & SONS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO U. S. CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

F. C. REID & CO., PRINTERS, 1409-11 LAWRENCE ST., DENVER.

IN THE SUPREME COURT OF THE UNITED STATES.

To the October Term, A. D. 1897.

To the Honorable, the Supreme Court of the United States, and the Judges thereof:

I.

Comes now the Board of County Commissioners of the County of Gunnison and the State of Colorado, and petitions this honorable Court for a writ of *certiorari* to the United States Circuit Court of Appeals for the Eighth Circuit in a certain cause lately therein depending, entitled E. H. Rollins & Sons, Plaintiffs in Error, versus The Board of County Commissioners of the County of Gunnison, your petitioner, Defendant in Error, said cause being in error to the Circuit Court of the United States for the District of Colorado, and which said cause was and is numbered 856 on the docket of said Court, and in which a decision was by the said Court heretofore and at the May term, A. D. 1897, thereof duly entered, reversing the judgment of the Circuit Court of the United States for the Eighth Judicial Circuit in and for the State of Colorado theretofore rendered in said cause, all of which more fully appears in the record of the proceedings in said cause in said Court of Appeals.

II.

That this application is made under the terms and provisions of Section 6 of the act of Congress of March 3, A. D. 1891, and entitled "An act to establish a Circuit Court of Appeals and to define and regulate in said cases the jurisdiction of the Circuit Court of the United States, and for other purposes."

III.

That the said plaintiff in error filed its complaint in said cause in the said Circuit Court of the United States for the District of Colorado on, to wit, the 1st day of March, A. D. 1895, against your petitioner, the said Board of Commissioners of the County of Gunnison, and in and by its said complaint it declared that it was a corporation duly organized under the laws of the State of New Hampshire; that your petitioner was a municipal corporation, organized and existing under the laws of the State of Colorado since the 9th day of March, 1877; that by the laws of said State, the said Board of County Commissioners, your petitioners aforesaid, was authorized to examine and settle all accounts of receipts and expenses of the county, and examine, settle and allow all accounts chargeable against it, and to issue county warrants therefor, when so settled, to build and keep in repair county buildings and to have the management generally of the business and concerns of the said county, where not otherwise provided by law.

That the said defendant further alleged in said complaint that your petitioner, the said Board

of Commissioners, on the 1st day of December, 1882, caused to be made and executed certain bonds, a copy whereof was set forth in said complaint and in which the said County of Gunnison was alleged to have acknowledged itself indebted, and promised to pay to the bearer $1,000, lawful money of the United States, for value received, redeemable at the pleasure of your petitioner after ten years and absolutely due and payable twenty years from the date thereof at the office of the Treasurer of said county, in the city of Gunnison, with interest at the rate of eight per cent per annum, payable semi-annually upon presentation and surrender of annexed coupons as they should become due; that said bonds were issued by your petitioner in exchange at par for valid floating indebtedness of said county outstanding prior to September 22, 1882, in conformity with the provisions of an act of the General Assembly of the State of Colorado, approved February 21, 1881, all the requirements of which were certified to have been fully compled with by the proper officers in the issuing of said bonds; that the total amount of the said issue did not exceed the limit prescribed by the Constitution of the State of Colorado, and that the issue of bonds was authorized by a vote of a majority of the duly qualified electors of said county at a general election on November 7, A. D. 1882; that the bonds of the said issue were comprised in three series, designated A, B and C, respectively, those of series A being for $1,000 each, those of series B for $500 each and those of series C for $100 each, the faith and

credit of said county being thereby pledged for the punctual payment of the principal and interest of said bonds.

The said plaintiff in error also alleged in said complaint that to each of said bonds were attached coupons for the semi-annual interest, in and by which the County of Gunnison promised to pay the bearer $40 at the office of the County Treasurer, or of the Chase National Bank in the City of New York at the maturity thereof, being six months interest on funding bonds, and that there was a sufficient number of coupons attached to each of said bonds, in form as therein set forth, to provide for the payment of all the interest on said bonds.

And the plaintiff in error further alleged in said complaint that on December 1, 1882, your petitioner made an exchange with parties then holding county warrants before then issued, in accordance with the statute made and provided and in settlement of claims presented by them against the county for the bonds thereof with coupons attached, said exchange being made at par for the face and interest of such warrants, and, in such cases, the blanks were filled out with the name of the party receiving the bonds and the blank for the place of payment filled in as the banking-house of the Chase National Bank in the City of New York; that said bonds were signed by the chairman of your petitioner, and countersigned by the County Treasurer of said county, and attested by the County Clerk thereof, with the seal thereunto attached; that at the time of issuing said

bonds as therein set forth, the amount thereof had been authorized by a vote of the qualified electors to be exchanged therefor, which amount was spread upon the records of the said county, as provided for by the act as in said bonds referred to, and that in all other respects, all the terms and conditions of said act were fully complied with, and that said bonds were duly registered in the office of the Auditor of the State of Colorado.

That said plaintiff in error further alleged that wherever said bonds were issued and delivered to the payees therein named, they were received by said parties in exchange for said warrants, the amount of the bonds being the same as the amount of the warrants and interest thereon, which theretofore had been issued by said county, and that the said County of Gunnison from that time until about the 1st day of March, A. D. 1886, paid the interest on said bonds semi-annually in accordance with the terms thereof and of the coupons thereto attached, and that on the 1st day of September, A. D. 1886, the said county made default in the payment of said coupons and neglected and refused to pay the same, and ever since has refused and still refuses to pay said interest; and that the said county made similar default on the 1st day of March, A. D. 1887; the 1st day of September, A. D. 1887; the 1st day of March, A. D. 1888; the 1st day of September, A. D. 1888; the 1st day of March, A. D. 1889; the 1st day of September, A. D. 1889; the 1st day of March, A. D. 1890; the 1st day of September, A. D. 1890; the 1st day of March, 1891; the 1st day of September, 1891; the 1st day

of March, 1892, and the 1st day of September, 1892, in the payment of said coupons, and has since refused and still refuses to pay said interest due on said bonds.

And the plaintiff in error further alleged that it was the holder and owner of coupons formerly attached to and belonging to certain of said bonds numbered 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 which were, at the time of the issuance thereof, attached to certain of said bonds of series A, said coupons being for the sum of $40 each, and the bonds being numbered 9, 10, 11, 12 and 13, 64, 65, 66 and 98, and that it became the purchaser of said coupons before the same became due for a valuable consideration paid by it, and without notice of any claim at law or in equity affecting their validity, wherefore, it prayed judgment against the defendant in the sum of $5,200, together with interest on said coupons to the date of judgment.

IV.

Your petitioner further declares that after wards and on, to wit, the 10th day of September A. D. 1895, your petitioner by its attorneys filed it answer to the said complaint, denied each and every allegation therein contained except its own and the corporate capacity of the plaintiff, and the organization of the latter under the laws of the State of New Hampshire, and alleged that the said coupons therein described and the said bonds thereby represented were each and all illegal and void, because they were made and issued on the

1st day of December, 1882, and purported to have been made and issued under the provisions of the act of the General Assembly of the State of Colorado, entitled an act to enable the several counties of the State to fund their floating indebtedness, approved February 21, 1881; that said bonds, with said coupons attached, were issued in an attempt to fund floating claims against Gunnison County which were illegal and void, and represented by county orders or warrants; that said claims originated and said warrants were issued after the adoption of Section 6, Article XI., of the Constitution of Colorado, adopted in the year 1876; that none of said warrants or any claims represented by them were contracted or made for the purpose of erecting public buildings, nor was the question of incurring or contracting the alleged debts or any of them represented by said warrants ever in any manner submitted to the electors of the county; that at the various times when the said claims originated, and when the said warrants were issued, the assessed valuation of the taxable property of said county amounted to $1,000,000, and did not exceed $5,000,000, as shown by the assessment rolls thereof; that when each and every of said claims originated and said warrants issued, the said county already had, exclusive of all debts contracted or incurred prior to the adoption of said section of the Constitution, and exclusive of all debts contracted to erect public buildings or making and repairing public roads and bridges, an outstanding, valid and subsisting indebtedness amounting to more than $6 on the

thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment rolls thereof, and that all of said claims and warrants were in excess of said constitutional limitation, the said county having no power or authority to contract said claims or issue said warrants or any of them, in consequence whereof they were and are wholly illegal and void.

And your petitioner in said answer did further aver that at the time of the issuance of said bonds and coupons and when all things were done which were done under the provisions of said act of the said General Assembly, the said County of Gunnison already had, exclusive of all debts contracted prior to the adoption of said Constitution, and of and for the purpose of erecting public buildings and making and repairing public roads and bridges, an outstanding, valid and subsisting indebtedness amounting to more than $6 on each $1,000 of the assessed valuation of taxable property of said county, as shown by the assessment rolls of said county for the year 1882, and that the question of contracting or incurring the alleged indebtedness represented by said warrants and bonds was never, in any manner, submitted to the electors of the county, and that each and every of said bonds and coupons sued on were issued in excess of the limit prescribed by Section 6, Article XI., of the Constitution, and, therefore, illegal and void.

And your petitioner also averred in said answer that while Section 1 of the said act of the General Assembly provided, *inter alia*, that the

amount of floating indebtedness of the county at a given time should be determined by the County Commissioners, and a certificate made of the same, and made a part of the records of the county, and while the County Commissioners did undertake to determine the amount of such floating indebtedness of the county, and did make a certificate purporting to show the amount thereof, and did make the same a part of the records of the county, such certificate, so made a part of the records of the county, showed the amount of such floating indebtedness to be $174,115.29, while the assessed valuation of the taxable property within the county at that time, as shown by the assessment roll thereof for the year 1882, was $2,304,955, and that the said certificate so made, and made a part of the records of the county, was entered of record on the 18th day of November, 1882, and has ever since been and now is a public record of the county and subject to the inspection of all persons.

Your petitioners also averred in said answer that the true intent and meaning of Section 1 of said act of February 21, 1881, was that the Commissioners should determine and certify in manner aforesaid, and make public record of the amount of floating claims in the form of county warrants existing against the county, irrespective of any question as to the validity of said claims as affected by the provisions of the Constitution; and that such certificate and record and the assessment roll of the county for said year should impart notice to all persons that the said County

Commissioners were not empowered by said act, nor by any other law, to determine or certify in any manner, either in the bonds to be issued or otherwise, that the bonds were in exchange for floating indebtedness of the county, or that the issue was in full conformity with the provisions of the act of February 21, 1881, or that the amount of such bonded issue did not exceed the limit prescribed by the Constitution of the State of Colorado, or that the said issue of bonds had been authorized by a vote of a majority of the qualified electors of the county, or that the faith or credit of the county was pledged for the payment of said bonds, and that any and all such recitals were made without any authority of law, and were, therefore, null and void.

And your petitioner, in a third and further defense to the said complaint, alleged that the said bonds and coupons were illegal and void for the reasons thereinbefore set forth, and did also aver that, although by Section 1 of said act of February 21, 1881, it was, *inter alia*, provided that the whole amount of bonds issued under said act should not exceed the sum of the county indebtedness at the date of the first publication of the aforementioned notice, and the amount should be determined by the County Commissioners, and a certificate made of the same, and made a part of the records of the county, and that while the County Commissioners of the county did make what purported to be a certificate of the amount of such indebtedness, in the sum of $174,115.29, and made the same a public record, yet that said

Commissioners had no power or authority of law to determine or attempt to determine the amount of such indebtedness, or certify or attempt to certify, in any manner whatever, either in the bonds to be issued under the provisions thereof or otherwise, because the said provisions of Section 1 of said act of February 21, 1881, in so far as the same undertook to confer upon said Commissioners power and authority to determine the amount of floating or other indebtedness of the county, or to make a certificate thereof, or to make the same a part of the records of the county, or to determine or certify the amount of floating or other indebtedness of the county, for the purpose of, or connected with, the issuance of bonds under said act, was in conflict with Section 6 of Article XI. of the Constitution of said State, and, therefore, unconstitutional and void, inasmuch as it would otherwise confer power and authority upon the said Board to determine and certify to void and fictitious indebtedness, and thus estop the county from pleading the truth as against such claims, and that the recitals contained in the bond to said effect were, therefore, beyond the power of said Commissioners to make.

And your petitioner further declares that in said answer it filed a fourth and additional defense to the said complaint, in which it alleged the said bonds and coupons thereon to be void, for the reasons theretofore set forth, and because the provisions of said act of February 21, 1881, in so far as the same undertakes to confer upon the County Commissioners power or authority to de-

termine the amount of indebtedness of the said county to make a certificate thereof, and to make the same a part of the records of the said county, is unconstitutional and void, and the issuance of bonds by said Commissioners under said act, in exchange for invalid or void claims, was null and void, any recitals on the face of the bonds to the contrary, notwithstanding.

And your petitioner further declares that in and by said answer it filed a fifth and further defense to the said plaintiff's complaint, in which it alleged the said several coupons and bonds represented thereby to be void and illegal for the reasons hereinbefore set forth, and also because the question of funding the valid indebtedness of said county was never submitted to the vote of the qualified electors of said county, and that the recital in said bond to the effect that such submission was had, cannot estop the county from setting up said defense, because said recital was made by the said Commissioners of said county under the said act of February 21, 1881, which was and is unconstitutional and in conflict with said Section 6 of Article XI. of said Constitution, because the power to make such recital in said bonds, if binding upon the taxpayers of said county, would defeat and render wholly nugatory the terms and provisions of said section of the Constitution.

And your petitioners further declare that in said answer they filed a sixth and further defense to the said complaint and alleged the said bonds and coupons to be void and illegal for the reasons hereinbefore set forth and because the alleged in-

debtedness exchanged for the said bonds were void, because they had been issued by the County Commissioners of said county after its constitutional limit of indebtedness had been reached and passed, and were, therefore, without any consideration whatever, and the bonds and coupons issued therefor were also illegal and void.

And your petitioner did further allege in said sixth answer that in the year A. D. 1880 the said Commissioners of said Gunnison County, acting under the provisions of an act of the General Assembly of the State of Colorado, entitled an act concerning counties, county officers and county government, etc., approved March 24, 1877, caused to be issued and sold, for the purpose of erecting necessary public buildings and making and repairing public roads and bridges, county bonds of the amount of $20,000, which said bonds were issued in all respects as required by law, and all the matters and things connected therewith have ever since been and now are matters of public record and subject to the inspection of all persons, and said bonds have ever since their issue been and now are an indebtedness of said county.

That under and pursuant to the provisions of Section 30 of said act of March 24, 1877, the County Commissioners of said county at regular sessions of the Board in January and July in the year 1882, made out semi-annual statements of the amount of indebtedness, and at said respective times caused said statements to be published as provided for by said act; that each of said semi-annual statements showed the amount of debt owing

by the county, in what said debt consisted, what payments had been made upon the same, when any payments had been made, the rate of interest which said debts were drawing and a detailed account of receipts and expenditures of the county for the preceding months, and in which it was shown from what officer and on what account any money had been received, and the amounts and to what individuals, and on what account any money had been paid, and the amounts, and in each of said statements a balance was struck showing the amount of the deficit, and that each of them were, as provided by said section, entered of record by the Clerk of the Board of Commissioners in a book by him kept for that purpose only; said book being a public record and open to the inspection of all persons at all times; that in each of said semi-annual statements made after the issue of said $20,000 building, road and bridge bonds, the indebtedness represented by said bonds was clearly shown, and in each of said statements it was further shown, aside from said indebtedness represented by said bonds theretofore contracted by the county during said year 1882 and prior to the making and recording of said statement, exceeded the said limit, and that said semi-annual statements and the matters therein contained were true, and that the purchasers and holders of said bonds, including the plaintiff, took the same with notice of the fact, as shown by the said public records and the assessment rolls of said county, that said bonds and the said claims upon which they

were based were void, because in excess of said constitutional limit.

And your petitioner further declares that in said answer it filed another and additional defense, in which it alleged the said bonds and coupons to be void for the reasons aforesaid, and also because the said act of February 21, 1881, under which the said bonds were issued, was unconstitutional in that it undertook to empower the County Commissioners to issue negotiable bonds of the county for an indebtedness for claims not contracted for the purpose of erecting necessary public buildings, nor for the making or repairing of public roads or bridges.

And your petitioner further declares that in said answer it alleged an additional and further defense to the said plaintiff's complaint, in which it declared the said bonds and coupons to be illegal and void for the reasons hereinbefore stated, and also because the record of the County Commissioners made under said act showing the indebtedness of said county to be $174,115.29, and which determination was made a part of the records of said county on, to wit, the 30th day of August, 1882, was and is notice to all persons at any time holding said bonds, of the invalidity and void character thereof, when taken in connection with the assessment roll of said county for the year 1882, and the prior assessment rolls thereof, and that, in consequence thereof, the said bonds and coupons were and each of them is null and void.

And your petitioner further declares that in its said answer it filed an additional and further

defense to the said plaintiff's complaint, in and by which it alleged the said bonds and coupons to be illegal and void for the reasons hereinbefore stated, and also because the said bonds were divided into three series, A, B and C, those of series A being for the sum of $1,000 each, those of series B being for the sum of $500 each and those of series C for the sum of $100 each; and that of such bonded issue the bonds of series A were numbered consecutively from 1 to 154, as required by said act; and that the bonds of the plaintiff belonged to said series and were numbered, respectively, 9, 10, 11, 12, 13, 63, 64, 65, 66 and 98; that the total contracting power of the county in 1882, under the assessed valuation thereof, was $13,829.73, and any debt contracted or bond issued in excess of said amount was void, and that the purchaser of any of said bonds of series A, the number of which was above thirteen, took the same with notice on the face thereof, and indicated by the number thereof, that the same was void, because in excess of said constitutional limit, the said number being notice to all persons that the limit had, as aforesaid, been exceeded.

And your petitioner further declares that in said answer it filed another and additional defense to the said action in and by which it alleged that the said bonds and coupons were void for the reasons hereinbefore stated, and also because the question of incurring the alleged indebtedness represented by the warrants exchanged for said bonds was never in any manner submitted to the electors of said county as required by Section 6 of Article

XI. of the Constitution, and that the said bonds and coupons were, therefore, illegal and void, and that the plaintiff in obtaining the said coupons took the same with actual notice and knowledge of all facts pleaded by your petitioner, and that all former holders thereof took the same with like notice and knowledge.

And your petitioner further declares that in and by said answer it filed an eleventh and further defense to the plaintiff's complaint, in which it alleged that all coupons sued on and described in said complaint, and which matured on or before the 1st day of March in the year 1889, and prior thereto were barred by the statute of limitations of the State of Colorado, for the reason that the cause of action did not accrue upon any of said coupons within six years next before the commencement of suit, and that said answer was duly verified by J. K. Hinkle for your petitioner on, to wit, the 30th day of August, A. D. 1895.

And your petititioner further avers that afterwards and on, to wit, the 7th day of November, A. D. 1895, the said plaintiff filed a general replication to said answer and denial of each and every of the allegations therein contained.

V.

Your petitioner further represents and declares that after the filing of said answer and replication and, to wit, on or about the 19th of May, 1896, at the May term, A. D. 1896, of said United States Circuit Court for the said District of Colorado, the said cause came on to be heard

upon the issues tendered by said complaint, answer and replication, and, a jury having been impaneled, the plaintiff and defendant gave evidence in support of their respective issues, whereupon and on, to wit, the 20th day of May aforesaid, the Court instructed the jury to render a verdict for your petitioner, the said defendant, which was by said jury done.

And thereupon the Court entered judgment in said cause for the defendant, your petitioner, and against the plaintiff, the said E. H. Rollins & Sons.

VI.

That afterwards and on, to wit, the 17th day of August, A. D. 1896, a writ of error duly issued to the said United States Circuit Court for the District of Colorado, commanding the said Court to have the record and proceedings in said cause at the city of St. Louis, Mo., and filed in the office of the Clerk of the United States Circuit Court of Appeals for said Eighth Circuit on or before the 16th day of October, A. D. 1896, to the end that the said record and proceedings should be inspected as provided by law.

VII.

That afterwards and, to wit, on the 30th day of September, A. D. 1896, a transcript of the said record pursuant to the said writ of error was duly lodged in the office of the Clerk of the said Court of Appeals of the said Eighth Circuit and a printed transcript of the record aforesaid was thereafter by said Clerk duly prepared in accordance with the

rules of said honorable Court, copies of which, as required by the rules of this honorable Court, are herewith filed for its convenience.

VIII.

That afterwards and on and at, to wit, the May term, A. D. 1897, of the said honorable Court, and after due argument thereof, the said Circuit Court of Appeals reversed the said judgment of the said United States Circuit Court for the said District of Colorado in said cause and remanded the same to said Court for a new trial, whereby the said judgment of the said Circuit Court for the said District of Colorado was set aside and for naught held.

IX.

Your petitioner further declares that in and by the decision and opinion of said Circuit Court of Appeals, and as appears from the record of said Court herewith transmitted, that the said Court in reversing the said judgment of the said Circuit Court of the United States for the District of Colorado decided and determined the said judgment of said Court to be erroneous, because the said Court erred in permitting your petitioner to offer in evidence three statements purporting to be financial statements of Gunnison County, Colorado, for the six months ending respectively on December 31, 1881, June 30, 1882, and December 30, 1882. To each of these statements a certificate of the Board was appended, reciting that it was a full, true and correct statement of Gunnison County's financial condition for the period covered

thereby, as the same appeared in the records of Gunnison County in book of statements. These statements showed the total indebtedness of Gunnison County, consisting of bonds and warrants, to have been $77,559.01 on December 31, 1881; $118,691.49 on June 30, 1882; and $284,763.05 on December 30, 1882.

They also showed on what account debts had been incurred by the county during the period which they covered, and the names of the persons and firms in whose favor warrants had been drawn, and were prepared in compliance with Section 30 of the act of the Legislature of Colorado of March 4, 1877, entitled "An act concerning counties, county officers and county government, and repealing laws on these subjects."

Your petitioner further avers that the exception to the introduction of these statements was by the said honorable Circuit Court of Appeals declared to present the question of chief importance arising upon the record, and that the said statements were not admissible in evidence against an innocent purchaser for value before maturity of funding bonds containing such recitals as those contained in the bonds in controversy. The said honorable Circuit Court of Appeals reached its said conclusion upon the assumption that a certain other document offered in evidence by your petitioner at said trial, to wit, a certified copy of the record of proceedings of the Board of County Commissioners of Gunnison County under the act of February 21, 1881, was contradictory in its character and con-

tents to the contents of the said semi-annual statements, and that, as between the two said statements, that made under the act of February 21, 1881, was the only statement, if any, which the Legislature intended should be consulted by warrant holders or other persons who might be concerned in the issuance of funding bonds. Yet your petitioner alleges that the said honorable Court does not in its opinion in said cause point out or define any contradiction between the said semi-annual statements and the said statement under said act of February 21, 1881; that the said honorable Court of Appeals also determined that the decision of this honorable Court entitled Sutliff against the Commissioners of Lake County, 147 U. S., 230, is not applicable to the holders of bonds under the funding act of the State of Colorado of February 21, 1881, but only those statements required to be kept by the provisions of said act are binding upon the holders or purchasers of funding bonds issued thereunder, if, indeed, such persons are chargeable with notice of certificates or statements required by either of them; that, in discussing the latter propositions, the said honorable Circuit Court of Appeals expressed the opinion that the record made by the Board of County Commissioners disclosed no facts rendering the said bonds void in the hands of an innocent purchaser for value, notwithstanding it appears that the said certificate showed an indebtedness on August 21, 1882, far in excess of the limit placed upon the power of counties to incur indebtedness for any purpose by the provisions of Section 6 of Article XI. of the

State Constitution; that the said honorable Court did also determine that because the said bonds on their face purported to be funding bonds, issued for valid floating indebtedness, such recital would not create a new debt, and, therefore, a purchaser of said bonds who examined one of them, or the whole issue, for that matter, in the light of the constitutional provision and the certificate, would have been unable to say that the recital was false and that the bonds were void for the reason that the entire debt certified to by the Board might have been created before the assessed value of county property reached the million-dollar mark, until which time there were no restrictions upon the power of the county to contract debts. As a consequence, the said honorable Court declared the result from that view of the case to be, that as against a *bona fide* holder of funding bonds in controversy the certified copy of the proceedings of the Board of County Commissioners became material testimony.

Your petitioner further avers that the said honorable Circuit Court of Appeals in its said opinion declares the action of the Court below, in permitting your petitioner at said trial to introduce certain lists of county warrants surrendered to the county in exchange for the bonds in suit with others, to have been erroneous, because such testimony could not affect the rights of a *bona fide* purchaser of said bonds, who relies upon their recitals for his protection, and that the testimony contained in the record showed, without contradiction, that the plaintiff was a *bona fide* holder

when the suit was brought of at least five of the bonds in controversy, although, as to the other five, the said honorable Court does not undertake to determine, on the facts preserved in the record, whether the said plaintiff in error was or was not a *bona fide* holder, but declared that the question was one requiring the consideration of a jury.

Your petitioner respectfully complains that great and manifest error appeareth in said decision as to each and every of the propositions by it announced as hereinbefore recited and as appears therein; and it alleges for such errors the following:

1. The said Circuit Court of Appeals conceded the soundness of the contention made by your petitioner at the hearing of said cause, as well as in its printed briefs, that inasmuch as the bill of exceptions did not purport to contain all the evidence, the action of the lower Court, in directing a verdict for the defendant, could not be reviewed, nor any exceptions considered which were taken to the charge of the trial Court. Notwithstanding this position, the said Court in effect reversed the case, *for reasons appearing upon the face of the bill of exceptions and concerning the testimony*. It declares that the record made by the Board of County Commissioners certifying the total amount of county indebtedness contained no recital binding upon a *bona fide* holder for value, of the bonds in suit, and also that the plaintiff in error was a *bona fide* holder of at least five of the bonds represented in the action; hence, it concluded that the trial Court erred in directing a

verdict under these circumstances for the defendant. We cannot see how this conclusion is consistent with the concession made by the Court, of the soundness of our objection to the consideration of errors assigned upon a bill not purporting to contain all the evidence. The Court of Appeals, while admitting that the action of the lower Court under such circumstances, in directing a verdict for the defendant, cannot be reviewed, nevertheless does review and reverse it. Why the Court should say that the items of proof admitted could not bind by their disclosures a *bona fide* holder and that the testimony contained in the present record shows without contradiction that the plaintiff was a *bona fide* holder, when the record does not purport to contain all the evidence, and when such defect is fatal to the consideration of the lower Court's action in directing a verdict, is incomprehensible.

2. The question of chief importance arising upon the record, in the opinion of the Court of Appeals, was the introduction of the semi-annual statements of the condition of the county. They were held to be inadmissible against an innocent purchaser for value, before maturity of funding bonds containing such recitals as appear in the bonds in controversy. The converse of this proposition should be equally true, to wit, that the admission of these statements against those who are not innocent purchasers is not error. Yet the Court, upon a defective bill of exceptions, and in violation of the rule that all presumptions of proofs submitted at the trial will be made to support the

action of the Court, determines that the plaintiff in error was an innocent purchaser. This action of the said Court gives the same force and vitality to a bill of exceptions which does not contain all of the testimony which is given to one that does. Such a conclusion, we think, is opposed to the reasoning of those cases decided by this honorable Court in which defective bills of exceptions are held to conclude the parties relying upon them from the relief they seek.

3. The said Court erred in holding that the said semi-annual statements were not admissible in evidence against an innocent purchaser for value before maturity of funding bonds containing recitals like those in controversy. These semi-annual statements are required to be made by all counties, whether indebted or otherwise. It is a matter of general law; it is not a specific requirement appearing in a statute authorizing the creation of any particular form of debt, the issuance of bonds for any particular purpose, or the funding of general obligations of a county. It is not peculiar to building bonds, road or bridge bonds, or funding bonds; it is of universal application. It bears the same relation to the liabilities of a county that the statute requiring records of assessed valuations bears to the assets of a county. It is a record public in its character, of which all are bound to take notice, which speaks for itself, and which, in the language of Mr. Justice Matthews, in Dixon County vs. Field, 111 U. S., 95, "is extrinsic, proves itself by inspection, and concludes all determinations that contradict it." The decision of the

Court of Appeals, in holding that said statements were not admissible, is in conflict with the opinion of this honorable Court in the case of Sutliff against Lake County Commissioners, 147 U. S., 230, which involved the admission of this identical evidence, the only difference between the two cases being that Sutliff's bonds were for building roads and bridges, while those of the plaintiff in error are funding bonds. It is quite true that the recitals on the face of the two classes of bonds are different, but no recital appearing on the face of a bond can neutralize the obligation of notice arising from recorded facts provided for by the Constitution and by statute, and relating to assessed valuations on the one hand and outstanding liabilities on the other. If the rule were otherwise, the most solemn facts could be swept aside by a contradictory recital, and every constitutional and statutory safeguard for the protection of taxpayers would be neutralized by the edict of a dishonest, negligent or irresponsible official.

4. The said honorable Court erred in declaring the Sutliff case to be inapplicable to the one at bar, because the bonds in the Sutliff case were issued under the legislative act of March 24, 1877, and not under the funding act of February 21, 1881. This reasoning is unsound, because it implies that the act of March 24, 1877, was a specific act authorizing the issuance of building bonds, and that the semi-annual statements required by that act were intended to constitute a record for that purpose only; whereas, the act, as we have before stated, is one relating generally to county

government, and requiring these statements to be kept under any and all circumstances, and constitutes them a standing record of the county's financial condition binding alike on those having actual and those having no knowledge of their contents. There is no statement in the Sutliff case which warrants the inference that the recognition by this Court of the binding character of these statements is limited to that class of individuals who hold or may become the owners of building and bridge bonds only.

5. The said Court erred in holding that the Sutliff case should not be applied to a case like the one in hand where the bonds contain a certificate that the total amount of the issue does not exceed the limit prescribed by the Constitution of the State of Colorado. Why it should not be so applied we cannot understand. If these statements constitute a public record, which is "a fact extrinsic and one which determines itself, and one also which concludes all determinations that contradict it," then it were idle to say that its binding character depends not upon the fact itself, but upon the recitals contained in a bond the enforcement of which is attempted regardless of the record.

The position assumed by the honorable Court of Appeals is directly opposed to the decisions of this honorable Court upon this subject, from the case of Dixon County vs. Field down to the present time, the only apparent exception being Chaffee County vs. Potter, 142 U. S., 355, in which the

existence of this statute was not even called to the attention of the Court.

6. The said Court also erred in the following conclusion: "When, as in the present case, it appears that there are two acts passed at different times, each making provision for an official statement of the county indebtedness to be made at different times, one of which statements is required to be made with express reference to an issue of bonds, and as one of the preliminary statements to that end, we think it is reasonable to conclude that a purchaser of the bonds is at most only charged with the duty of examining the latter statement."

This doctrine would be true if the two statements required by the different acts were each special in their character. Where, however, one is general, and must be made under all circumstances, whether bonds are to be issued or not, the second is at best but supplementary to it. Indeed, it is reasonable to assume that the second must be made from the first, for the former stands as the recorded condition of the county, and presumptively correct. We do not believe that because a special law makes provision for the recording of a certificate of indebtedness, it neutralizes to any degree the effect of a general law, making provision for recorded semi-annual statements. The latter is as binding upon those interested in the operations of the special act as it is upon all other classes of people.

7. But the Court proceeds with an assumption not warranted by the facts in the record or

anywhere shown by the opinion of said Court to exist. It declares that "If a discrepancy exists between the two statements, it is clear, we think, that that statement should govern and control which was made with express reference to an issue of bonds, and presumably for the information of the bondholder, and that the bondholder should only be charged with the duty of examining the statement on which he has a right to rely."

The Court refrains from deciding whether the statement required to be made by the specific act is admissible against an alleged *bona fide* holder of bonds issued under said act, because it assumes that the record made under the specific act in this case disclosed no facts rendering the bonds void in the hands of the innocent purchaser for value. We deny absolutely that any discrepancy whatever exists between the statement now under consideration and those made semi-annually under the act of March 24, 1877. Both show the amount of indebtedness to have been grossly in excess of the constitutional limitation, and if these records were intended for any purpose whatever, they must have constituted a recorded and official warning to all would-be holders of bonds thereafter to be issued, that, taken in connection with the recorded valuations of the county, they represent a debt absolutely void, for want of power on the part of the county to contract it.

The honorable Court of Appeals avoid this consequence by referring to the recitals of the bonds, one being that the total amount issued did not exceed the constitutional limit of indebted-

ness, the other being that the bonds on their face purported to be funding bonds for valid floating indebtedness, which would not create a new debt. In other words, refuge is again taken in the recitals of the bonds, and these, after all, constitute the basis of the opinion.

We suggest it would have been better to have declared in direct terms that the recitals in the bonds render nugatory all constitutional and statutory limitations as to amounts and provisions for recorded notice of existing facts of valuation and liability.

8. The said honorable Court erred in holding that "A purchaser of the bonds who examined one of them, or the whole issue, for that matter, in the light of the constitutional provision and the certificate made by the Board, would have been unable to say that the recital was false, and the bonds were void, for the reason that the entire debt certified to by the Board might have been created before the assessed value of county property reached the million-dollar mark, until which time there were no restrictions upon the power of the county to contract debts." No better reason than this could be given for the necessity of requiring all purchasers to be bound by the semi-annual statements provided for by the act of March 24, 1877. The Court, however, not only at this, but at all times in its opinion, seems to have lost sight of the importance of the record of assessed valuations, which must be conceded to be binding upon all persons, in view of past decisions of this and other Courts upon the subject. A pur-

chaser of one of the bonds or all of them, with the assessed valuations of the county in one hand and the recorded certificate of the Commissioners under the Act of February 21, 1881, in the other, would surely, by reason of the arithmetical calculation he would naturally make under the requirements of the State Constitution, be put upon inquiry as to the time when the enormous debt shown by the certificate was contracted. This would lead him to an examination of the semi-annual statements, and they, in turn, would give him all needed information.

9. The Court below erred in its assumed reliance, among others, upon the case of Chaffee County vs. Potter, 142 U. S., 355, in support of its opinion. The facts embodied in the two cases were entirely dissimilar, except in so far as the recitals upon the face of the bonds are concerned. The Potter case was determined upon demurrer to the complaint. Neither the recorded certificate required by the act of February 21, 1881, nor the semi-annual statements required by the general law of March 24, 1877, were pleaded or for the moment considered.

The difference which distinguished the Sutliff from the Potter case was as plainly—if not more plainly—apparent in the case at bar.

10. The Court below committed error in holding that the trial Court erred in permitting your petitioner to introduce three lists of county warrants which had been surrendered to the county by the owners and holders thereof, when the ten funding bonds involved in the present suit were

issued. These warrants were introduced largely for the purpose of showing that the issuance of the bonds constituted practically but one transaction, and that no particular warrant went into any particular bond; that warrants illegal and warrants legal were probably mingled inextricably together, and that, as a consequence, the plaintiff in error could not contend, as it did contend, that the warrants exchanged for the bonds in suit were valid, lawful and binding upon the County of Gunnison. They were not introduced, as the Court of Appeals assumes, to contradict and overcome the recitals which the bonds in controversy contained. Offered for the purposes intended, they were clearly admissible, and their purpose could not have been misunderstood by the plaintiff in error at the time of their introduction.

11. The Court below also erred in declaring that the testimony contained in the record showed without contradiction that the plaintiff was a *bona fide* holder when the suit was brought of at least five bonds involved in the present controversy, and, therefore, the case should be reversed. The Court does not pretend to assume what testimony was left out of the record. It admits that all intendments supporting the action of the trial Court will be made, where a bill of exceptions does not purport to contain all the testimony. It declares that under such circumstances the action of the trial Court in directing a verdict will not be disturbed. Notwithstanding this, it deliberately finds that the testimony in the record shows the plaintiff to be a *bona fide* holder, and, therefore,

the case should be reversed. This is in palpable contradiction of the precedents made by itself, and of those made by this Court which should govern it. But we deny that the testimony shows that the plaintiff was a *bona fide* holder. Standley, the assignor of the plaintiff in error, declares that he turned in his warrants for bonds 9 to 13, and that he bought bonds 63 to 66 and bond number 98. (Transcript, fol. 67.) He knew when he bought them, and from the number, that at least $98,000 worth of bonds of series A had been issued. He knew also that there were two other series of bonds, which made the amount greater than $98,000. (Transcript, fols. 76–78.) He therefore knew from the facts disclosed by the record concerning valuation and amount of debt, and of which he was bound to take notice, that the bonds by him purchased were in excess of the constitutional limitation and absolutely void.

It follows, therefore, that whether this fact be considered from the testimony disclosed by the bill of exceptions, or whether it be assumed from the testimony which the bill does not disclose, the finding of the Court upon the subject is erroneous. Why, under these circumstances, the question of *bona fides* as to five of the bonds is one which requires the consideration of the jury, the Court of Appeals does not pretend to say.

12. The Court below erred in failing to give consideration to the recitals of the certificates of assessed valuation of the county. The effect of these assessments upon the case is entirely overlooked, notwithstanding their tremendous import-

ance. Its failure to recognize the doctrine established by this Court that these assessments are conclusive upon so-called *bona fide* bondholders, as upon all others, has resulted in great and manifest injury to your petitioner.

13. The Court of Appeals erred in neglecting or refusing to follow the ruling and decisions of this honorable Court in cases similar to the one at bar. The said cause was prepared and tried by your petitioner in strict accordance with the doctrine announced by this honorable Court in the cases of Town of Coloma vs. Eaves, 92 U. S., 484; Buchanan vs. Litchfield, 102 U. S., 287; Dixon County vs. Field, 111 U. S., 83; Lake County vs. Graham, 130 U. S., 674; Lake County vs. Rollins, 134 U. S., 662; Chaffee County vs. Potter, 142 U. S., 355; Sutliff vs. Lake County Commissioners, 147 U. S., 230; Nesbit vs. County of Riverside, 144 U. S., 610; Hedges vs. Dixon County, 150 U. S., 182, and other cases, recognizing, following and approving decisions hereinabove cited.

If the decision of which your petitioner complains is permitted to stand, and this honorable Court shall decline to review the same, it will, as a precedent, practically result in the establishment of legal principles wholly inconsistent with those announced by this honorable Court, and be productive not only of great injury and injustice to the taxpayers of the County of Gunnison, but to all people similarly situated, where holders of so-called obligations incurred by negligent and dishonest officials on the one side and speculators in municipal securities upon the other have sought

to establish grievous and burdensome debts in flagrant disregard and violation of the most solemn prohibitions of statutes and constitutions.

Your petitioners, therefore, respectfully pray this honorable Court to issue a writ of *certiorari* to said United States Circuit Court of Appeals for the Eighth Judicial Circuit, requiring it to certify to this Court under Section 6 of said act of Congress, approved March 3, 1891, a true, full and complete record of said cause of E. H. Rollins & Sons, plaintiffs in error, vs. The Board of County Commissioners of the County of Gunnison, defendant in error, and numbered 856 on the dockets of said Court, with all convenient speed, that this honorable Court will review the same, and determine whether error has been committed by the said Court in its said decision as herein alleged, and to set at rest and finally determine the matters and things in controversy between the parties hereto, as hereinabove at length set forth, and in duty bound your petitioner will ever pray.

THOMAS C. BROWN,
CHARLES S. THOMAS,
WILLIAM H. BRYANT,
HARRY H. LEE,
Attorneys for Petitioner.

UNITED STATES OF AMERICA,
DISTRICT OF COLORADO, } ss.

On this day personally came .....

....., who being first duly sworn according to law, deposes and says that he is the chairman of the Board of County Commissioners of Gunnison County, that he has read the above and foregoing petition for a writ of *certiorari* in said cause, and that the matters and things therein set forth are true, according to the best of his knowledge, information and belief.

.....

No. 178.

DEC 7 1898
JAMES H. McKENNEY,
Clerk

Brf. of Thomas & Bryant for Pet.

IN

THE SUPREME COURT

Filed Dec. 7 1898.

OF THE

UNITED STATES.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO,
Petitioner,

vs.

E. H. ROLLINS & SONS,
Respondent.

No. 178.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF AND ARGUMENT OF PETITIONER.

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On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF AND ARGUMENT OF PETITIONER.

I.

STATEMENT OF THE CASE.

This was an action brought in the Circuit Court of the United States for the District of Colorado, by E. H. Rollins & Sons, a corporation organized under the laws of the State of New Hampshire, against the Board of County Commissioners of the

county of Gunnison, a municipal corporation existing in the State of Colorado. The action was brought to recover the amount due on a large number of coupons cut from funding bonds of Gunnison County, issued on the first day of December, 1882, the complainant alleging that the county of Gunnison, on the first of December, 1882, having full authority thereto, issued its certain funding bonds in exchange for warrants of Gunnison County, which said warrants were exchanged at par, and the bonds issued to the warrant holder; that the bonds had been authorized by a vote of the qualified electors of the county and the conditions of the statute had been fully complied with; that the county of Gunnison paid the interest coupons upon said bond issue from the first day of December, 1882, until the first day of March, 1886, since which latter date it had refused to pay any interest; that the plaintiff was the holder and owner of coupons formerly attached and belonging to said bonds, and that the county had refused to pay the same.

The answer of the county contained, first, a general denial of all the allegations of the complaint, and then set out eleven affirmative defences, all arising under the provisions of the statutes and Constitution of the State of Colorado, and chiefly based upon the fact that the county in issuing the bonds set forth in the complaint had attempted to incur an indebtedness not authorized by the express provisions of the Constitution of Colorado. These various defences will be referred to more at length in the course of the following argument.

The complaint was filed on the first of March,

1895; the issues were made up and the case was tried on the 19th of May, 1896. At the conclusion of the testimony the judge of the Circuit Court directed a verdict for the defendant. The Court in directing a verdict rendered quite a lengthy opinion upon the various matters presented by the record, but concluded with a peremptory instruction to the jury to return a verdict for the defendant. The plaintiff took the case by writ of error to the United States Circuit Court of Appeals, where it was duly argued, and on May 3, 1897, an opinion was filed reversing the judgment of the Circuit Court and remanding the case for a new trial. A writ of *certiorari* was prayed for to this court, and granted.

There is little or no dispute upon the facts presented, nearly everything being a question of law, and the evidence bearing upon these various questions will be called to the attention of the Court at the proper places in the argument.

II.

Specification of Errors.

The only error which can properly be assigned upon the record, we presume, is the action of the Court of Appeals in reversing the judgment of the Circuit Court, but there are several propositions of law presented in the opinion of the Court to which we desire to call attention, and these propositions are the following:

First—The Court erred in reversing the judgment on errors committed in the admission or exclusion of testimony when the record shows that all the testimony was not contained in the bill of

exceptions and the court below directed a verdict for the defendant.

Second—The court below erred in holding that it was error in the trial court to admit in evidence the financial statements of Gunnison county for the six months ending respectively on December 31, 1881, June 30, 1882, and December 30, 1882.

Third—The Court erred in holding that the court below erred in admitting in evidence a certified copy of the record and proceedings of the Board of County Commissioners of Gunnison county by virtue of which the bonds in controversy had been issued.

Fourth—The Court erred in holding that the recitals contained in the bonds in controversy estopped the county from proving against an innocent purchaser that the bonds had been issued in excess of the limit of indebtedness authorized by the Constitution of Colorado.

Fifth—The Court erred in holding the bonds from which the coupons were cut to be valid obligations of Gunnison county.

We think that the various matters presented in the record can be reached by a discussion of the above propositions, and will take them up in the order indicated.

III.

Argument.

First—The Court erred in reversing the judgment on errors committed in the admission or exclusion of testimony when the record shows that all the testimony was not contained in the bill of exceptions and the Court below directed a verdict for the defendant.

The bill of exceptions, made a part of the records, does not show that it contains all of the evidence introduced upon the trial. This point was made in the Court of Appeals and sustained by the Court. Judge Thayer used this language :

"Inasmuch as the bill of exceptions fails to show that it contains all the evidence which was produced at the trial of the case, the point is well made, in behalf of the defendant, that the action of the lower court in directing a verdict for the defendant cannot be reviewed. Nor can any of the exceptions which were taken to the charge be reviewed, for, while the charge was somewhat lengthy, yet as it concluded with a peremptory direction to the jury to return a verdict for the defendant, it must be treated by this Court precisely as it would have been had the trial court, without any explanation of its views, simply directed a finding for the defendant. When a peremptory instruction is given either in favor of the plaintiff or the defendant, the only question with respect to the charge which is open for consideration by an appellate tribunal, is whether the direction to find for the one party or the other, when considered in the light of the pleadings and *all* the evidence, was right, and if the bill of exceptions fails to disclose that it contains all the evidence, *that* question, for obvious reasons, cannot be noticed. *Taylor-Craig Corporation vs. Hage, 32 U. S. App., 548; 16 C. C. A., 339; United States Mutual Accident Association vs. Robinson, 36 U. S. App., 690; 20 C. C. A., 262.*"

The Court then says that the only question which can be considered in the record is whether errors were committed in the admission or exclusion of testimony. This is a remarkable conclusion for a court to reach after saying that it could not review the action of the court in directing a verdict. In other words, the Court says: The judgment of the lower court is right; we cannot interfere with that judgment, but if, in arriving at a judgment of this kind, the court admitted in evidence erroneous

testimony or excluded proper testimony, we can reverse this righteous judgment upon that ground. This conclusion is one never before reached by a court of justice. The rule has been universal that wherever the judgment of a lower court is seen to be a right and proper judgment, a higher tribunal will not reverse it for any erroneous reason or because improper testimony may have crept into the record. Little or no argument need be made upon this head. This position is so obvious that merely calling it to the attention of the Court is sufficient. It is settled law that, where a court takes a case away from a jury and directs a verdict, that the same rules apply as though the court had tried the case alone without a jury.

Robbins vs. Potter, 98 Mass, 532.
Daly vs. Wise, 132 N. Y., 306.
Maier vs. Davis, 57 Wis., 212.

That is to say, the jury having been eliminated from the case by the action of the court, the appellate court will apply the same rules to the trial of the case that it would have applied had both issues of law and fact been submitted to the court in the first instance.

It is equally well settled that every presumption will be indulged to sustain the judgment of a trial court and although improper evidence may have been admitted it will be presumed that in arriving at a conclusion only proper evidence was considered and that the judgment of the court below is correct.

Hinckley vs. Pittsburg Steel Co., 121 U. S., 264.

Mammoth Mining Co. vs. Salt Lake Foundry & Machine Co., 151 U. S., 447.
Parker vs. Van Buren, 20 Colo., 217.
White vs. White, 82 Cala., 427.
Smith vs. Long 106 Ill., 485.
Tower vs. Fetz., 26 Neb., 706.
Kirkland vs. Telling, 49 Wis., 634.
Minton vs. Pickens, 24 S. C., 592.
State vs. Seabright, 15 W. Va., 590.

Second—The court below erred in holding that it was error in the trial court to admit in evidence the financial statements of Gunnison County for the six months ending respectively on December 31, 1881, June 30, 1882, and December 30, 1882.

The evidence in this case when it came on for trial on behalf of the plaintiff, consisted in offering in evidence one of the bonds of Gunnison County as a sample, over the objection of the defendants. The coupons sued upon in the case were cut from bonds numbered 9, 10, 11, 12, 13, 63, 64 65, 66 and 98. The plaintiff expressly disclaimed being the owner of the bonds themselves and only contended that they were the owners of the coupons. The only other proof offered by the plaintiffs was to show that Mr. Joseph Standley had exchanged warrants of Gunnison County for five of the bonds and had bought the other five for a valuable consideration; that he had afterwards sold the entire ten to the plaintiffs in this suit and that the plaintiffs had afterwards sold the bonds. They also proved that the coupons had never been paid and that the interest and principal amounted to $9,718.80.

The defendant upon the matter which we are

now calling to the attention of the Court first offered in evidence a certified copy of the abstract of the assessment or the amount of assessed property in the county of Gunnison for the years 1880, 1881 and 1882. An objection was made to these documents, but no exception was saved to their admission. These assesment rolls showed that the assessed valuation of Gunnison county for the year 1880 amounted to $596,583; for 1881, $1,266,962; for 1882, $2,340,955. Under the rules laid down by this Court in *Dixon Co. vs. Field, 111 U. S.; Lake Co. vs. Graham, 130 U. S.*, and *Hedges vs. Dixon Co., 150 U. S*, we have here the essential elements to determine the amount of indebtedness which the county of Gunnison could incur under the Constitution of Colorado. Section 6 of Article XI. of the Constitution of Colorado is as follows:

"No county shall contract any debt by loan in any form except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges, and such indebtedness contracted in any one year shall not exceed the rates upon the taxable property in such county following, towit: Counties in which the assessed valuations of taxable property shall exceed five millions of dollars, $1.50 on each thousand dollars thereof; counties in which such valuation shall be less than five millions of dollars, $3 on each thousand dollars thereof; and the aggregate amount of indebtedness of any county for all purposes, exclusive of debts contracted before the adoption of this Constitution, shall not at any time exceed twice the amount above herein limited, unless when, in manner provided by law, the question of incurring such debt shall at a general election be submitted to such of the qualified electors of such county as in the year last preceding such election shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favor of incurring the debt; but the bonds, if any be issued therefor, shall not run less than ten years, and the

aggregate amount of debt so contracted shall not at any time exceed twice the rate upon the valuation last herein mentioned; provided that this section shall not apply to counties having a valuation of less than one million dollars"

The Court will see from the prohibitions contained in this provision that they do not apply to counties having a valuation of less than $1,000,000. Under the evidence referred to above, the assessed valuation of Gunnison county for the year 1880 was less than $1,000,000. It was, therefore, at liberty to contract an indebtedness to any amount. Under a recent decision of the Supreme Court of Colorado, the assessed valuation becomes effective for each year in the state on the first day of September.

Board of County Commissioners of Lake County vs. Standley, 24 Colo., 1.

Gunnison county, until the first day of September, 1881, was governed by the assessment roll for the year 1880, and its power to contract an indebtedness until said date was subject to no constitutional limitation. After the first day of September, 1881, and until the first day of September, 1882, it was governed by the assessment roll for the year 1881, and after the first of September, 1882, by the assessment roll of that year. The utmost limit of indebtedness authorized by the constitutional provision above was $12 per $1,000. The total indebtedness which Gunnison county could have under the assessment roll for the year 1881, and giving the widest possible latitude to the constitutional provision, would be $14,400, and for the year 1882, $27,600. This is allowing twelve dollars per thousand on $1,200,000 for the year 1881, and twelve dollars

per thousand for $2,300,000 for the year 1882. That is to say, up to the first day of September, 1882, Gunnison County could have a lawful indebtness of $14,400, and during the year 1882 it could incur an additional indebtedness of $13,200, bringing up its grand total to $27,600.

Under the rules announced in *Dixon Co. vs. Field*, the only factors to be considered by the Board of County Commissioners and the public in purchasing the bond issue would be the assessed valuation and the rate of indebtedness if the total amount of the bond issue appeared upon the face of the bonds. That is to say, if it appeared upon the face of the bonds from which the coupons were cut, that the total bond issue exceeded the sum of $27,600, a purchaser by looking at the assessed valuation and the constitutional limit would see that the total amount exceeded the total indebtedness which the county could incur. He would be put upon notice and no recitals by the county officials and no records made by them would estop the county from showing the invalidity of the bonds. One-half of the bonds in controversy come within this rule. Each of these bonds recited upon its face that the issue comprised three series, designated "A," "B" and "C," respectively; the bonds of series "A" being for the sum of $1,000; those of series "B" for the sum of $500; and those of series "C" for the sum of $100. The bonds in controversy were all designated as bonds of series "A." Those numbered 63, 64 65, 66 and 98, showed upon their face that bonds for $1,000 numbered from 1 to 62 had already been issued, so that a purchaser of these bonds would be put upon

notice that this bond issue at least amounted to $62,000, and was, therefore, prohibited by the consti utional provision above quoted.

We will not at this time discuss the effect of any valid indebtedness incurred in the year 1880, when the county had a full right to contract any indebtedness it saw fit. If such indebtedness exceeded the sum $14,000 or $27,000, it would still be a valid debt. Our position upon this point is that while the county had a right to incur any amount of indebtedness before the constitutional limitation took effect, yet this indebtedness would have to be counted as a part of the outstanding obligations of the county in going to make up the limit of indebtedness after the one million dollar mark had been reached. That is, if in this instance, the county had created a debt of, say, $30,000, it could not increase this indebtedness or incur any additional sum until it had reduced the amount below the limit laid down by the constitution. This point, however, is not directly involved in this case.

But the first five bonds mentioned in the complaint numbered from 9 to 13, would not, upon their face, show that they were issued in an amount prohibited by the constitution. They would show a bond issue of not to exceed $13,000, and the county could incur a total indebtednes of $14,400, at all times mentioned in the complaint and evidence. It was, therefore, necessary for the defendant county to introduce another factor in the case, and show that before these bonds were issued there was an outstanding previous indebtedness of a sufficient mount to make this additional $13,000, beyond the mit provided by the constitution. To do this the

defendant was compelled to prove that it had an outstanding indebtedness of a sufficient amount to produce this result. The defendant met this issue by offering in evidence three records showing the amount of indebtedness at the six months' periods ending December 31, 1881, June 30, 1882, and December 30, 1882. These were offered in evidence to bring the case within the terms of the decision of this court in *Sutliff vs. Lake County*, 147 U. S. The Circuit Court of Appeals held that this evidence was inadmissible.

Before giving the views of the Court upon this point it would be well to call attention to the statutory provisions which are discussed by the Court, and in its opinion..

Section 30 of the Act of March, 1877, is as follows:

"It shall be the duty of the Board of County Commissioners of each county to make out semi-annual statements at the regular sessions in January and July, at which time they shall have such statements published in some weekly newspaper published in the county, if there be such published, and if there be no newspaper published in the county, such commissioners shall cause such statements to be posted in three conspicuous places in said county—one of which shall be the Court-house door—and such statement shall show the amount of debt owing by their county, in what the debt consists, what payments, if any, have been made upon the same, the rate of interest that such debts are drawing, also a detailed account of the receipts and expenditures of the county for the preceding months, in which shall be shown from what officer and on what account any money has been received, and the amounts and to what individuals and on what account any money has been paid, and the amounts, and shall strike the balance, showing the amount deficit, if any, and the balance in the treasury, if any, and the statement thus made, in addition to being published as before specified, shall also

be entered of record by the Clerk of the Board of County Commissioners in a book to be by him kept for that purpose only, which book shall be open to the inspection of the public at all times ''

Section 1 of the funding act of February 21, 1881:

"It shall be the duty of the County Commissioners of any county having a floating indebtedness exceeding $10,000, upon the petition of fifty of the electors of said county who shall have paid taxes upon property assessed to them in said county, in the preceding year, to publish for the period of thirty days in a newspaper published within said county, a notice requesting the holders of the warrants of such county to submit in writing to the Board of County Commissioners, within thirty days from the date of the first publication of such notice, a statement of the amount of the warrants of such county, which they will exchange at par and accrued interest for the bonds of such county, to be issued under the provisions of this act, taking such bonds at par.

"It shall be the duty of such Board of County Commissioners at the next general election occurring after the expiration of thirty days from the date of the first publication of the notice aforementioned, upon the petition of fifty of the electors of such county, who shall have paid taxes upon property assessed to them in said county, in the preceding year, to submit to the vote of the qualified electors of such county who shall have paid taxes on property assessed to them in said county in the preceding year, the question whether the Board of County Commissioners shall issue bonds of such county under the provisions of this act in exchange at par for the warrants of such county, issued prior to the date of the first publication of the aforesaid notice; or they may submit such question at a special election, which they are hereby empowered to call for that purpose at any time after the expiration of thirty days from the date of the first publication of the notice aforementioned, on the petition of fifty qualified electors as aforesaid; and they shall publish for the period of at least thirty days immediately preceding such general or special election, in some newspaper

published within such county, a notice that such question will be submitted to the duly qualified electors as aforesaid at such election."

"The County Treasurer of such county shall make out and cause to be delivered to the judges of election in each election precinct in the county, prior to the said election, a certified list of the taxpayers in such county who shall have paid taxes upon property assessed to them in such county in the preceding year; and no person shall vote upon the question of the funding of the county indebtedness, unless his name shall appear upon such list, nor unless he shall have paid all county taxes assessed against him in such county in the preceding year. If a majority of the votes lawfully cast upon the question of such funding of the floating county indebtedness shall be for the funding of such indebtedness, the Board of County Commissioners may issue to any person or corporation holding any county warrant or warrants issued prior to the date of the first publication of the aforementioned notice, coupon bonds of such county, in exchange therefor, at par. No bonds shall be issued of less denomination than $100, and if issued for a greater amount, then for some multiple of that sum and the rate of interest shall not exceed eight per cent per annum The interest to be paid semi-annually at the office of the County Treasurer, or in the city of New York, at the option of the holder thereof. Such bonds to be payable at the pleasure of the county after ten years from the date of their issuance, but absolutely due and payable twenty years after date of issue. The whole amount of bonds issued under this act shall not exceed the sum of the county indebtedness at the date of the first publication of the aforementioned notice, and the amount shall be determined by the County Commissioners, and a certificate made of the same, and made a part of the record of the county; and any bond issued in excess of said sum shall be null and void, and all bonds issued under the provisions of this act shall be registered in the office of the State Auditor, to whom a fee of 10 cents shall be paid for recording each bond."

The Court of Appeals gives as the grounds of its ruling the following: "We are constrained to

hold the financial statements of semi-annual indebtedness are not admissible in evidence against an innocent purchaser for value before maturity of funding bonds containing such recitals as those contained in the bond in controversy, because the funding act of Febsuary 21, 1881, made it the duty of the Board of County Commissioners to determine the amount of county indebtedness and certify and record the same as one of the initial steps towards an issuance of funding bonds; that such a determination was made and entered of record before these bonds were issued, and is entitled to as much credit as the semi-annual statements of the same board under the general law of 1877." If it be true that the statute required the board *to determine and record the amount of the county indebtedness, it is equally true that the Board did not do so* in this case. It certifies to the amount of the *floating indebtedness only*, and that circumstance ought, of itself, to give some notice, even to a so-called *bona fide* holder, that a part only of the general indebtedness is floating. Neither is it true, as the Court declares, "that this certificate is required as an initial step toward the issuance of the bonds." The statute *does not provide when this determination shall be made*, although inferentially it may be said that such a certificate should be recorded prior to the issuance of any bonds whatever.

But the Court of Appeals, in endeavoring to distinguish the case at bar from the Sutliff case, declares that the bonds in suit are issued under a statute which makes "provision for a *judicial* determination of the amount of the county indebtedness before such bonds were issued, and also re-

quired such determination to be made as of the date of the proposed issue." If it be true that the act of 1881 invested the Board of Commissioners with the discretionary or judicial power of determining the amount of the debt of the county, then it must follow either that the statute in that particular is unconstitutional, or that the inhibitions of the constitution itself, together with the legislative act of 1877, concerning the government of counties, are not binding either upon the General Assembly or its creatures—the Board of County Commissioners. It must also follow that the decisions of this Court upon these subjects are meaningless and obsolete. *Dixon County vs. Field* has until now been justly regarded as a classic upon this subject. We shall not burden the Court with a repetition of the facts in that case, but will content ourselves by recalling the circumstance that the identical claim recognized by the Court of Appeals for the Board of Commissioners was there rejected. "Nothing in the way of inquiry, ascertainment or determination as to that fact," says the Court, "is submitted to the county officers. They are bound, it is true, to learn from the assessment what the limit upon their authority is, as a necessary preliminary in the exercise of their functions and the performance of their duty; but the information is for themselves alone. All the world beside must have it from the same source and for themselves. The fact, as it is recorded in the assessment itself, is extrinsic and proves itself by inspection, and concludes all determinations that contradict it."

Now, the County Commissioners could only determine the amount of the indebtedness

of the county in one way, and that way was by consulting the semi-annual statement immediately preceding August 21, 1882, and the record of warrants thereafter made and issued as provided by Section 44 of the General Act of 1877, requiring every county order to be numbered, and its date, amount and number and the name of the person to whom it is issued, to be entered in a book kept by him in his office for that purpose, and by a similar book of receipts and expenditures required by Section 105 of the same act to be kept by the County Treasurer, who, at the meeting in July and January of the Board of Commissioners, or such other time as they may direct, shall settle with them his account as Treasurer, and exhibit to them all his books and accounts and all vouchers relating to the same to be audited and allowed, both of which records are expressly declared to be public and subject to inspection. In other words, the amount of indebtedness, floating or otherwise, which the Commissioners were required by the refunding act of 1881 "to determine," was simply a matter of calculation and not of judgment. They exercised no more judicial power to determine the amount than is exercised by an adding machine which mechanically writes the correct quotient to any given number of figures. The principle of *Dixon County vs. Field* has been so often and so frequently recognized and approved by this Court that a mere statement of subsequent cases is unnecessary. We may be pardoned, however, for calling attention to the able summary of the doctrine of these cases announced by his Honor, Judge

Sanborn, in the case of *The National Life Ins. Co. vs. The Board of Education*, 62 Fed. Rep., 791.

"From the decisions to which we have referred," says the learned judge, "we think the following rules are fairly deducible: Recitals in municipal bonds by the representative body that issues them, to the effect that all the requirements of law with reference to their issue have been complied with, will not estop the municipality from proving, as against a *bona fide* purchaser, that the representative body had no power to issue them, where no act of the representative or the constituent body could make the issue lawful at the time it was made, and this fact appears from the Constitution and statute under which the bonds are issued, the public records referred to therein and the bonds the purchaser buys. *Dixon County vs. Field, supra*, and cases cited thereunder. Such a recital may constitute an estoppel in favor of a *bona fide* purchaser even where the body that issued the bonds had no power to issue them, but could not, by any act of its own or of its constituent body, make a lawful issue of bonds, if that fact does not appear from the bonds the purchaser buys, the constitution and the statutes under which they are issued and the public records referred to therein.

Chaffee County vs. Potter, and cases cited *supra*.

If it be true that the act of 1881 must be considered as wholly independent of the general act of 1877, and that it lawfully conferred upon the Board of County Commissioners of Gunnison county *power to judicially determine the amount of*

the county indebtedness, and that the exercise of such power is conclusive upon the county as to bonds issued under said act in the hands of a *bona fide* holder, *then it must follow that there is no limitation upon the exercise of that power*, so far as the consequent liability of the county may be concerned. For example, the commissioners in this instance are said to have "judicially determined" the indebtedness of the county on August 21, 1882, to have been $174,000. Could they not as well have "judicially determined" that indebtedness to have been $174,000,000? And would not the issuance of bonds to that amount have consequently been valid obligations against the county in the hands of *bona fide* holders? In what manner shall we escape the conclusion that every county in the state by that law, previous laws and the constitution to the contrary notwithstanding, became subject to whatever indebtedness the Board of Commissioners might "judicially determine" to exist at a given time. A bitter experience warns us that since the issuance of funding bonds has become a recognized pursuit, the conscience of issuing Boards has, in many instances, scarcely been a visible quantity.

But the honorable Court of Appeals emphasizes the fact that as the Board is required to determine the true amount of the county debt as of the date of the first publication, "and as such indebtedness is liable to great fluctuations between the dates of the several semi-annual statements, it is fair to presume that the statement of the total county indebtedness, for which provision is made in the funding act, is the only authentic statement

of such indebtedness which the Legislature intended should be consulted either by warrant holders or other persons who might be concerned in the issuance of funding bonds." If this circumstance is controlling in the case of funding bonds, it should be equally controlling in the case of bonds like those in controversy in Sutliff against the commissioners. They, too, may be issued between the dates of semi-annual statements, at which time the fluctuations may exist, and the record of such statements, therefore, be not controlling; but we have already pointed out that other records, provided for by the same act and binding alike upon the County Commissioners and the public as matters of general record, subject to constant inspection, are provided for, so that the amount of indebtedness at any given time is merely a matter of calculation and not of judgment. If this circumstance is controlling in the case at bar, the doctrine of Sutliff againt the Commissioners cannot be sound law, and we come at once to a comparison of the doctrine of that case with the opinion now under consideration.

The honorable Court of Appeals have labored earnestly, but unsuccessfully, to show that Sutliff against the Commissioners is not applicable to this controversy. In the first place, it contends that the bonds there in suit were issued under Section 21 of the same act, of which Section 30 provides for semi-annual statements, and, therefore, a difference between the two cases exists. The statement is true, but the result cannot follow. The First General Assembly of the State of Colorado in 1877 among other things enacted a gen-

eral law concerning county government, which was intended to cover all phases of county administration, including the issue of bonds for loan, under Section 6, Article XI., of the Constitution, for the erection of public buildings and the building and repairing of roads and bridges. Section 30 provides for a permanent continuing public record of the indebtedness of all counties on January 1st and July 1st of each year, wholly irrespective of the issuance or non-issuance of bonds, either under special or general laws. The records thus kept by all the counties are open to public inspection at all times, and necessarily binding upon persons dealing or having occasion to deal with the County Commissioners. *These statements constitute the source from which must be ascertained all things necessary to set in motion the funding act of 1881.* It is intended by them to show correctly and conclusively all forms of indebtedness and all sources of revenue. It provides, so to speak, for a semi-annual trial balance of the county affairs, and, in the language of Mr. Justice Harlan in the Field case, concludes all determinations contrary to itself. It is binding alike upon warrant holders, contractors, the holders of bonds for the floating of loans, for funding purposes, and for all other purposes. To say that the provisions of such an act are binding upon *bona fide* holders of bonds issued for courthouse and similar purposes, but are not binding on the holders of funding bonds representing warrants necessarily included in such statements before they could be funded, is practically to hold that a general statute intended for general purposes and binding upon the public in general is conclusive

only upon a very small proportion of such public, all the others being relegated to the relieving clauses of special acts which not only did not but never before were supposed to have even indirectly repealed or affected such general law.

The honorable Court, continuing, say:

"We do not understand the decision in the Sutliff case to go to the extent of holding that a bond purchaser must, at his peril, examine every record of county indebtedness which has been made by county officials, pursuant to the provisions of the statute, with a view of satisfying himself that the constitutional limit of indebtedness has not been exceeded."

This may be true, but the Court of Appeals must certainly have understood the Sutliff case to go to the extent of holding that bond purchasers must at their peril examine the record of these semi-annual statements, and it is precisely these statements which the Court of Appeals declare not to be binding upon the holders of funding bonds.

The language of Mr. Justice Gray upon this subject is as follows:

"In those cases in which this Court has held a municipal corporation to be estopped by recitals in its bonds, to assert that they were issued in excess of the limit imposed by the Constitution or statutes of the State, the statutes, as construed by the Court, left it to the officers issuing the bonds to determine whether the facts existed which constituted the statutory or constitutional condition precedent, and did not require those facts to be made a matter of public record. *But if the statute expressly requires those facts to be made a matter of public record, open to the inspection of everyone, there can be no implication that it was intended to leave that matter to be determined and concluded contrary to the facts so recorded by the officers charged with the duty of issuing the bonds.*"

Sutliff vs. Commissioners, 147 U. S., 235.

Again:

"The case at bar does not fall within *Chaffee County vs. Potter, and cannot be distinguished in principle from Dixon County vs. Field, or from Lake County vs. Graham.* The only difference worthy of notice is that in each of these cases the single fact required to be shown by the public record was the valuation of the property of the county, whereas, here two facts are to be shown—the valuation of the property and the amount of the county debt; but as both of those facts are equally required by the statute to be entered on the public record of the county, they are both facts of which all the world is bound to take notice, and as to which, therefore, the county cannot be concluded by any recitals in the bonds." *Ibid.*, page 238.

In *Lake County vs. Graham*, funding bonds were in controversy, yet this honorable Court not only failed to note the fine distinction between funding bonds and building bonds, but expressly declare that no such distinction exists.

If this does not mean that the public record required to be kept by Section 30 is binding upon all the world, including the *bona fide* holders, so called, of funding bonds, then it is difficult to comprehend the meaning of language or the intention of courts as expressed therein. The two cases cannot stand together. The rule applicable to the liability of counties in one case is absolutely irreconcilable with the other. Both cannot be right. One must be wrong.

This inexorable fact must have impressed itself upon the mind of the honorable Court of Appeals, for it proceeds as follows:

"Even if such is the rule where, in cases like the Sutliff case, the bonds do not contain an express recital that the issue does not exceed the constitutional limit, yet it ought not to be applied to a case like the one in hand, where the bonds do con-

tain a certificate 'that the total amount of this issue does not exceed the limit prescribed by the Constitution of the State of Colorado.' ''

Here, then, is the only distinction which the Court of Appeals makes with confidence. The recitals in the two sets of bonds are different, and the recital contained in the funding bonds of Gunnison County is so broad as to wipe out the doctrine of the Sutliff case and make the county liable, irrespective of past decisions to the contrary.

We assert that this recital appearing on the face of the Gunnison County bonds is not only not warranted by anything in the funding act of 1881, but was made absolutely without any authority by the Commissioners, was the attempted exercise of a judicial power and would have been utterly void if the statute of 1881 had expressly attempted to confer such power upon them. A moment's consideration should be sufficient to convince one of the truth of these assertions.

The bonds in suit were drafted with great cunning and adroitness. A statement of the total amount of their issue was carefully avoided. They would not even have been numbered if the requirement of the statute could have been eluded. Nothing beyond the number which could have informed the holder of a bond of the total amount of the issue was permitted to appear upon them. It was, however, recited, without giving the amount of the issue, "that the total amount thereof does not exceed the limit prescribed by the Constitution of the State of Colorado." If such a recital was within the province of the Board to make, it is easy to perceive that Section 6 of Article XI. of the Con-

stitution would be utterly worthless as a barrier to municipal indebtedness. Given an indefinite issue of bonds, which makes no recital of the total amount of the issue, but declares that the constitutional limit has not been exceeded, and that limit, whatever it may be, disappears in an instant. It is true that the funding act requires the bonds to be registered with the Auditor, and the Commissioners to declare and record the amount of the county indebtedness, but the Court of Appeals holds that this amount may be fixed by the Commissioners in their discretion. It also decides that no statement of such amount is intended to fix the time when the indebtedness accrued, and it will, therefore, be presumed to have accrued at a time when the Commissioners had power to create it. This, coupled with the declaration in the bond itself that the limit had not been exceeded, places all the property of the taxpayers of the State of Colorado entirely at the mercy of a compact between bond-brokers and dishonest Commissioners. This virtually decides that *bona fide* holders are only charged with notice of a certificate and record which tells them nothing and which is, therefore, wholly worthless, either as knowledge to them or as a protection to taxpayers.

Again, if Commissioners may issue funding bonds reciting that the constitutional limit has not been reached, there is but little protection in that provision of Section 1 of the funding act which declares that any bond issue in excess of the sum of the indebtedness determined by the Commissioners shall be null and void; for, bearing in mind that the bonds are silent as to the total amount of the issue—that a purchaser could not, with one or

more bonds in his hand, determine from the record of the County Commissioners anything about the nature of the indebtedness, and that the recital as to the constitutional limit affords him ample protection—the Gunnison bond issue would be enforceable as well for $500,000 or any other sum as for $174,000.

It will not, of course, be overlooked that a Board of County Commissioners can exercise only such authority as may be expressly or by necessary implication conferred upon it. We search in vain for any express authority to the Commissioners to determine and recite the fact that the constitutional limit of indebtedness has not been reached. If it can do this, it may also insert in the bonds a recital that such a fact has been judicially determined by a court of competent jurisdiction, whether the same be true or false; that the said bonds shall be good in the hands of all holders, whether *bona fide* or otherwise; that the county has waived and relinquished the right to contest the validity of said bonds by judicial proceedings or otherwise, or that no defects which might injure or vitiate the bonds would be pleaded against them by succeeding county officials.

It is true that a similar recital on the face of the bonds in the suit of Chaffee County against Potter was held (Mr. Justice Gray dissenting), under the peculiar circumstances of that case, to estop the county from showing the contrary. Neither the question of the power or authority of the Commissioners to insert such a recital, nor the fact that a statute of the state required a public record of semi-annual statements of the indebted-

ness of the county to be kept, were brought to the attention of the Court. It held, therefore, that a purchaser could not, the bonds being silent as to their total amount, take one of them, or the whole issue, for that matter, and *by comparing it with the record of assessments*, ascertain whether the limitation had been reached.

We will compare the doctrine of that case with the one at bar later on.

Surely this Court cannot sustain the contention that the decision in the Sutliff case has no application to the bonds in suit because of an unauthorized recital upon the face of the latter, which in no wise absolves their holders from the effect of the records provided by section 30, except upon the theory that the Board of County Commissioners of Gunnison County constituted a judicial body, and, as such, had power to reach and announce conclusions at variance with the public records of the county.

Another reason assigned by the Court of Appeals for the inapplicability of the Sutliff case to this one is that "where two acts are passed at different times, each making provision for an official statement of the county indebtedness, to be made at different times, one of which is required to be made with express reference to an issue of bonds, and is one of the preliminary steps to that end, it is reasonable to conclude that the purchaser of the bonds is at most only charged with the duty of examining the latter statement." *"If a discrepancy exists between them*, it is clear," says the Court of Appeals, "that the statement should govern which was made with express reference to an issue of bonds, and presumably for the information of the

bondholders." The fatal weakness of this position lies in its assumption that the statements required to be made by the two acts of 1877 and 1881 are in conflict with each other, and that a discrepancy must exist between them. As a matter of fact, there can be no conflict between the semi-annual statements and the finding by the Commissioners of the amount of county indebtedness as preliminary to the issuance of funding bonds. The last must of necessity be derived from the first, and, unless so derived, can have no lawful foundation. The Commissioners cannot arbitrarily determine whether the county owes one dollar or ten dollars; they must go to the records, and from them make their calculation. No discrepancy whatever exists or is claimed to have ever existed between the amount certified in this case by the Commissioners as of August 21, 1882, and the record of semi-annual statements. Indeed, when the one is compared with the others, it will be found that the debt of the county on August 21, 1882, must have been just about the sum certified by the Commissioners, assuming, of course, that outstanding warrants represented an actual indebtedness. If we, therefore, should concede, for the sake of the argument—which we do not—that the position of the Court of Appeals on this point was sound, its conclusion must disappear upon the discovery that the discrepancy between the statements is wholly imaginary.

But the Court of Appeals, after disposing of the semi-annual statements, declares it to be unnecessary to determine whether the record of the Commissioners under the funding act was or was

not binding upon the plaintiff in error, for the reason that it is immaterial. The honorable Court says that "This record disclosed no facts rendering the bonds void in the hands of an innocent purchaser for value, because, although the certificate showed the total county indebtedness as of April 21, 1882, it did not pretend to state when that indebtedness was created. Moreover, the bonds on their face purported to be funding bonds, issued for valid floating indebtedness which would not create a new debt, assuming the warrants for which they were issued to have been valid, but would simply change the form of existing indebtedness. A purchaser of the bonds, therefore, who examined one of them, or the whole issue, for that matter, in the light of the constitutional provision, and the certificate made by the Board, would have been unable to say that the aforesaid recital was false, and that the bonds were void, for the reason that the entire debt certified to by the Board might have been created before the assessed value of the county property reached the million-dollar mark, until which time there were no restrictions upon the power of the county to contract debts."

If it be true that the holder of one of the bonds or the entire issue could not, by consulting the County Commissioners' record of August 21, 1882, determine that the bonds were void because such certificate was silent as to the time when the dept was created, no better reason can be advanced in support of our contention that the semi-annual statements provided by Sections 30 of the act of 1877 are binding upon all assumed *bona fide* holders; for a reference to those statements must

inevitably have shown that a large proportion of the total indebtedness of $174,000 was absolutely void, because incurred at a time when the constitutional limitation was in full force, and inasmuch as no particular warrant was exchanged for any particular bond, the good could not be separated from the bad, and all would be void, under the decision of this Court in *Hedges vs. Dixon County*, 160 U. S.

For example, if a holder of the bonds or any of them had gone to the record of semi-annual statements, he would have found the debt of the county to have increased over $51,000 between the 31st of December, 1881, and the 30th of June, 1882, and more than $150 000 between the last named date and December 30, 1882, which period would include the amount of increase between June 30 and August 21, 1882.

Turning, then, to the record of assessed valuations, he would have discovered, and must, therefore, be charged with notice of the fact that on September 1, 1881, the million dollar limit of valuation was reached and passed, and that one year thereafter the valuation was less than two and one-half millions in all. These facts, binding alike upon seller and purchaser, and constituting public records accessible to all, cause the logic of the Court of Appeals to disappear, and bring the decision face to face with those of this honorable Court.

Just here we desire to emphasize the fact that *the Court of Appeals, from the beginning to the end of its opinion, seems either to have ignored or lost sight of the importance of the records of assessed valuation of the county* and forming part of the record. The effect of these assessments upon holders and

would-be purchasers of the bonds of Gunnison county is not so much as alluded to; the Court seems to have gone upon the theory that the record of indebtedness *and that alone* must be considered in connection with the rights of *bona fide* holders of these bonds. The effect of the two records, the assessments on the one hand, and the indebtedness on the other, so graphically described by Mr. Justice Gray in the Sutliff case, is not even mentioned. When we consider that the record of the county valuation is as indispensable as the other, and that the two must be considered together, and in connection with the bonds, the error of the Court's conclusions becomes the more apparent.

But the Court of Appeals, in support of its contention, cites *Chaffee County vs. Potter*, 142 U. S., 355. The bonds forming the subject of that controversy were evidently prepared by the same cunning hand which wrote those of Gunnison County. They recited that the total amount of the issue did not exceed the limit prescribed by the Constitution of the State. They were silent as to the total amount of the issue. The defenses pleaded by Chaffee County to that suit were simply that the bonds had not been authorized by qualified voters to be exchanged for warrants of the county, and the Board, therefore, had no jurisdiction to issue them; that they were issued in violation of Section 6, Article XI., of the Constitution of the State, and the debt which they assumed to fund was contracted in violation of said provision, and the bonds were issued without any consideration valid in law, as plaintiff well knew when he received the coupons sued on. To these defenses

a general demurrer was interposed, and the demurrer being sustained, judgment was entered thereon. There was nothing in the record which disclosed what the amount of the assessed valuation of the county was, on the one hand, or that a record of semi-annual statements of indebtedness had been kept on the other. There was no claim that the debt had been created either prior or subsequent to the time when the valuation of the county exceeded $1,000,000, or that the County Commissioners had made any record or certificate of indebtedness under the funding act itself. The power of the Commissioners to insert such a recital was not challenged. Indeed, counsel for the county seem to have assumed that the decision of this Court in Lake County against Graham had settled all questions connected with municipal securities in Colorado, and nothing further was necessary to be done or considered. Indeed, the only statute brought to the Court's attention was the State funding act. Mr. Justice Lamar decided that case from the record, and from that alone. He said the purchaser might even know—indeed, it may be admitted that he would be required to know—the assessed valuation of the taxable property of the county, and yet he could not ascertain, by reference to one of the bonds and the assessment roll, whether the county had exceeded its power under the Constitution in the premises. What he would have said, speaking for this honorable Court, had Section 30 of the act of 1877 been properly pleaded, so that the indebtedness, as well as the valuation, would have been taken into account, was doubtless stated by Mr. Justice Gray in

the Sutliff case, for on page 237 of that decision we find this reference to the Potter case:

"In Chaffee County against Potter, the bonds contain an express recital that the total amount of the issue did not exceed the constitutional limit and did not show on their face the amount of the issue, *and the county records showed only the valuation of the property*."

The italics are ours.

If, in addition to the record of the valuation, the other fact, to wit, the amount of the county debt, had been shown, "both equally required by the statute to be entered on the public records, of which all the world is bound to take notice," the decision would have been in perfect harmony with our contention, it differs from the Sutliff case only because our record was pleaded in the one and both of them were prominent in the other. If, too, the Court of Appeals had paused for one brief moment to consider the fact that the record of assessed valuations was in this transcript, its reliance upon Chaffee County against Potter would have been less confident, and, upon a little reflection, would have entirely failed.

There is one other reason why the Court of Appeals was wrong in holding these semi-annual statements to be non-admissible, and that is that they were never objected to by the plaintiff upon the ground discussed by the Court of Appeals. Page 47 of the Record will show just exactly what occurred when these semi-annual statements were offered in evidence. We quote the proceedings in full:

"MR. THOMAS: We now wish to offer a certified copy of the financial statement of the condi ion of Gunnison county for the

six months ending December 31, 1881, showing the total indebtedness of the county of Gunnison at that time.

"MR. JOHNSON: We object to the semi-annual statement of December 31, 1881, upon the following grounds: First, the bonds having been issued on the first day of December, 1882, the semi-annual statement of June 30, 1882, would be the material statement, if any one would be, and this one is not material.

"*Second*—That it has not been shown that this semi-annual statement was published in a newspaper or by posting, as the law requires, and that the recording thereof is only authorized in regard to a semi-annual statement that has thus been published.

"*Third*—That the statement on its face is not in compliance with the statute, and is not sufficient to bring home to the purchaser of bonds any actual knowledge of the indebtedness that is outstanding, and, particularly, any knowledge of the validity or invalidity of such indebtedness.

"*Fourth*—Because the semi-annual statements provided by a certain statute is not required to be kept, either by the Constitution or by the statute under which these bonds were issued, and, therefore, the purchaser cannot be required to take any notice of the same.

"*Fifth*—Because the funding act under which these bonds were issued vested in the Board of County Commissioners the power to compute the amount of the valid outstanding indebtedness of the county and to make a certificate in reference thereto, and these bonds having recited on their face that they were issued to fund valid floating indebtedness, a purchaser would not be bound to investigate this record.

"*Sixth*—Because this semi-annual statement offered in evidence does not attempt to show when the indebtedness mentioned therein was contracted, or whether it was contracted prior to the adoption of the Constitution or after such adoption, or whether it was contracted prior to the time the assessed valuation of the county reached a million dollars, or after that time, and that for these various reasons a purchaser would actually receive no notice or knowledge from the face of this semi-annual statement as to whether this indebtedness that was being funded by the issuance of these bonds was valid or invalid.

"*Seventh*—Because said indebtedness has been validated by constitutional amendment.

"THE COURT: We will receive the statement; some of these matters will be considered further on.

"To which ruling of the Court counsel for complainants then and there duly excepted.

"Whereupon said statement was received in evidence and was marked Exhibit G, and is hereto attached and made a part of this record.

"MR. THOMAS: We will offer a similar certified copy of the financial statement of Gunnison county for the six months ending June 30, 1882.

"MR. JOHNSON: We desire to object to the introduction of this record for all the reasons stated heretofore that are applicable.

"Which objection was by the Court overruled, to which ruling of the Court counsel for complainants then and there duly excepted.

"Whereupon said statement was received in evidence and marked Exhibit H, and is hereto attached and made a part of this record.

"MR. THOMAS: We also desire to offer a similar certified copy of the statement of the condition of Gunnison county for the six months ending December 30, 1882, for one month beyond the time when the bonds were issued, five months previous.

"Objected to by counsel for complainants for all the reasons heretofore stated, and for the additional reason that it was made after the issuance of these bonds.

"Which objection was by the Court overruled, to which ruling of the Court counsel for complainants then and there duly excepted. Said statement is hereto attached marked Exhibit I."

The main ground upon which the Court held these semi-annual statements inadmissible was that the recitals in the bonds precluded the county from making any proof as to the amount of the county indebtedness. Not one of the seven objections made to the statements when offered in evidence was directed to this specific ground.

The other ground of objection which seems to have been considered by the Court of Appeals, was that the semi-annual statements did not show when

the indebtedness mentioned had been contracted, so that it was impossible to tell whether before or after the assessed valuation of the county had reached one million dollars. But an examination of the statements themselves, which will be found in the Record beginning at page 108, and extending to page 121, will show this ground of objection as a matter of fact to be not well taken. The first statement which was for the six months ending December 31, 1881, shows that on June 30, 1881, there was a bonded indebtedness of $20,000, and outstanding warrants amounting to $29,690.44; that there was issued during the six months, beginning June 30, 1881, $34,227.86 of warrants, while there was canceled only $6,359.29, leaving a total warrant indebtedness of $57,559.01 outstanding December 31, 1881. Then follows a detailed statement showing the exact purpose for which the warrants had been issued. So that we have about $35,000 of the indebtedness contained in the first statement contracted after the county had already passed the limit of indebtedness that was imposed on September 1, 1881.

Turning to the next statement, found on page 116 of the Record, we find that from January 1 to June 30, 1882, $45,689.99 of warrants were issued, while only $8,200 were canceled; so that we have here incurred a new debt of many thousands of dollars beyond the total indebtedness allowed to the county.

Turning to the third statement, on page 118, we have warrants issued during that six months amounting to $80,939.27 and only $1,567.36 canceled; or an indebtedness created during that six months of several times the total amount which the county could possibly incur. The sixth ground of objection taken by counsel was not true as a matter of fact.

The first three grounds of objection made by counsel relate to mere matters of detail that are not even referred to by the Court of Appeals.

The fourth ground of objection is unintelligible, but seems to be made to the point that the semi-annual statements were not required to be kept by the statute under which the bonds were issued.

The fifth ground of objection is equally unintelligible, but seems to make the objection that the funding act having given the county commissioners authority to canvas the valid indebtedness of the county, the conclusion reached by the commissioners would be the only record which the purchaser would be required to notice, and he would not be compelled to investigate the record of semi-annual statements. These two objections are hinted at by the Court of Appeals, but its opinion does not seem to be expressly grounded upon either but solely upon the ground that the bond, having recited that the issue did not exceed the constitutional limit, the purchaser would be protected by this statement, and would be bound to take no notice of what was found in the semi-annual statements.

The seventh and last ground of objection was that the bonds had been validated by constitutional amendment. No reference is made to this in the opinion of the Court.

Under the well-settled rule that a person objecting to evidence must point out the specific ground of his objection, we contend that none of these objections were well taken, and the Court of Appeals so acknowledges it by its failing to place its decision upon either. For these reasons we contend that the Court was clearly wrong in holding that these semi-annual statements were not admissible in evidence.

Third—The Court erred in holding that the Court below erred in admitting in evidence a certified copy of the record and proceedings of the Board of County Commissioners of Gunnison county, by virtue of which the bonds in controversy had been issued.

The defendant offered in evidence a certified copy of the official proceedings of the Board of County Commissioners under which the bonds were issued. This was objected to by the plaintiff upon the ground that under the funding act a purchaser of bonds with recitals such as are contained in the bonds in controversy, would not be required to take any notice of the procedure of the board leading up to the actual issue and execution of the bonds.

The Court below after enquiring whether these proceedings contained the statement which counsel for the plaintiff had insisted was the only one to which a purchaser was bound to look, admitted the record in evidence (Transcript of the Record, page 48).

The portion of the record which was material consisted of a certificate made by the Board of County Commissioners, to the effect that the sum of the floating indebtedness of said Gunnison county amounted to $174,115.29. This certificate will be found in the transcript of the Record at page 132. The certificate was that the sum of the floating indebtedness of the county amounted to said amount on the date of the first publication of the notice to warrant holders ; that is to say on the 21st day of August, 1882 The Court will note that the assessed valuation for the year 1881 became effective on the first day of September, 1882 ; so that we have a floating indebtedness of $174,000, under an assessed valuation which permitted a total

indebtedness of $14,400. But the Court of Appeals say that it was not necessary to pass upon the question of whether or not a purchaser of the bonds would have to take notice of this record and the amount of the indebtedness therein stated, for the reason that the record of indebtedness disclosed no facts rendering the bonds void in the hands of an innocent purchaser for value. This upon the ground that the statement did not pretend to set forth when the indebte lness was created. Also upon the ground that being funding bonds they did not create a new debt but simply changed the form of an existing indebtedness. Upon this ground any invalid debt might be placed in the shape of a funding bond and made valid—another subterfuge by which county authorities could escape the positive prohibitions of the constitution. The Court says that the entire $174,159 might have been incurred before the million dollar mark was reached. This is true, and it might also have all been incurred after the million dollar mark had been reached. There is no presumption that we can see to be indulged in either way. A purchaser of these bonds on the 1st of December, 1882, or afterwards, was bound to take notice of the fact that he was purchasing obligations of a county which was acting under the provisions of a constitution that prohibited the county from incurring an indebtedness beyond a certain amount. He was bound to take notice of the fact that the assessed valuation of the county at that time amounted to more than two million dollars, and that by the express provisions of that instrument the constitutional prohibitions applied to that county. Was it not his duty to examine all the public records of the county bearing upon the county debt and ascertain whether or not the in-

debtedness which he was about to purchase was good or bad? Was he not bound to note that the Board of County Commissioners who issued these identical bonds had certified that on the 21st day of August when the county could only incur a debt of $14,400, that it was indebted in the sum of $174,000? Was not this a record sufficient to put him upon inquiry to the same extent and entitled to the same weight as the recital set forth in the bond? We cannot comprehend upon what theory the Court is able to say that a purchaser was not bound to take notice of this public record just as much as the purchaser of bonds in the Sutliff case was bound to take notice of the semi-annual statements required by the statutes of Colorado. Indeed, our contention is that the purchaser of bonds, or any other form of county indebtedness, is bound to take notice of every county record open to public inspection which contains a statement of the county indebtedness, whether it be a warrant register setting forth the warrants that are issued from day to day, a bond register setting forth the amount of bonds issued from time to time, the semi-annual statements of indebtedness (which are nothing but trial balances struck twice a year) a certificate required to be made before the bonds are issued, or any other public record of any kind, nature or description that is open to the inspection of everyone. We have discussed this phase of the case in the brief filed in the case of The Board of County Commissioners of the County of Lake, and State of Colorado, against Harry H. Dudley, at page 39 *et seq.* of said brief, to which reference is hereby made.

Fourth—The Court erred in holding that the recitals contained in the bonds estopped the county from

proving against an innocent purchaser that the bonds had been issued in excess of the limit of indebtedness authorized by the Constitution of Colorado.

This subject has been touched upon to a large extent in the argument of our first proposition, but we wish to call special attention to this point. The particular recital is contained in the following words: "It is further certified that the total amount of this issue does not exceed the limit prescribed by the Constitution of the state of Colorado, and that this issue of bonds has been authorized by a vote of a majority of the duly qualified electors of the said county of Gunnison voting on the question at a general election, duly held in said county, on the 7th day of November, A. D. 1882."

The Court will note that this recital is contained in the bond itself. The allegation of the complaint is that the plaintiff is the owner of coupons cut from said bonds. There is no allegation as to when he purchased the coupons, or whether the coupons were detached from the bonds at the time they were purchased or not. We do not understand that a purchaser of coupons cut from the bonds which he never saw would be protected by any recital in the bond itself. The doctrine of estoppel has always been strictly construed, and we believe will still be strictly construed if it can have any effect whatever as against a constitutional provision. The coupons which the plaintiff owns and which it purchased at some time are simply straight promissory notes of the County of Gunnison. The coupons in controversy were due from the 1st of March, 1887, to the 1st of September, 1892. Under the testimony of Mr. Standley the bonds were sold to plaintiff on the 16th of June, 1892. Whether attached or unattached the coupons were from six months to six years overdue.

But aside from this the language of the recital is not very explicit and ought not to operate as an estoppel, even though any estoppel could be urged against a want of power. The certificate is simply that the total amount of this issue does not exceed the limit prescribed by the Constitution of the State of Colorado. It does not say what is meant by the word "limit." If this refers to the limit of indebtedness it simply says that this bond issue, of itself, does not exceed such limit. The total amount of this issue does not mean that there was not outstanding other indebtedness which, added to this issue, would exceed the constitutional limit. Not a word is said with reference to other bond issues, other indebtedness, or anything beyond the mere amount of this particular issue. Giving this language the strict construction which all estoppels must be given, it would not prevent the county from showing other indebtedness outstanding before these bonds were issued.

But aside from all this, we desire to submit to the Court whether or not, under all the decisions of this tribunal, a recital of this kind can estop the county from showing by other public records that the bond issue did exceed the constitutional limit. Under the decisions already called to the attention of the Court, a constitutional provision like that contained in the constitution of Colorado operated as a denial of a power to create indebtedness to the county. A county organized under that constitution had no power of any kind to create a debt beyond the limit prescribed. The language of this Court in construing this identical constitution is explicit upon this point. The Court says: "The question here is distinguishable from that in the cases relied on by counsel for defendant in error. In this case the standard of validity is created by the con-

stitution. In that standard, two factors are to be considered: One the amount of assessed value, and the other the ratio between that assessed value and the debt proposed. These being exactions of the constitution itself, it is not within the power of a legislature to dispense with them, either directly or indirectly, by the creation of a municipal commission whose finding shall be taken in lieu of the fact."

Lake County vs. Graham, 130 U. S., 674.

That was a case upon funding bonds. The two factors to be considered in that case are the ones to be considered in this case—the amount of assessed value and the ratio between the assessed value and the debt proposed. The assessed value here was $1,200,000. The debt proposed was $174,000. The debt authorized by the assessed valuation was $14,400. Could any municipal commission, could the legislature itself, could all the people of the county, make a recital that would prevent the county from showing the relations between these two factors and showing the exact condition of affairs? The case is squarely in line with the decision of this Court just quoted and this decision has never been questioned from the good day it was rendered to the present time. The principle was reaffirmed in the case of *Graves vs. Saline County*, 161 *U. S.* 350, in the following language:

"While it is true that the mere exchange of new bonds for old ones and the payment of interest on the former by the county authorities would not estop the county from challenging the validity of the new as well as that of the old bonds, yet we think it was competent for the county, in such a state of facts as here existed, by a vote of its people, to waive the condition attached to the original subscription and to estop itself from declining to be bound by the new negotiable securities. It must be admitted,

as well-settled law, that where there is a total want of power to subscribe for stock and to issue bonds in payment, a municipality cannot estop itself from raising such a defense by admissions, or by issuing securities negotiable in form, nor even by receiving and enjoying the proceeds of such bonds."

Chaffee County vs. Potter, 142 U. S., 355, is the only case which can be cited against this position, and that case, when fairly construed, does not militate at all against us now. It does not appear from the record in that case as to whether the certificate made by the County Commissioners and spread upon the records of the county showed an amount of indebtedness in excess of that allowed by the constitution. Mr. Justice Lamar stated that the statute in terms gave to the Commissioners the determination of a fact and required them to spread a certificate of that determination upon the records of the county. The Graham case held that the Legislature had no right to delegate a power of this kind to any municipal body. In this respect the two cases are in direct conflict, and we believe that this Court will decide this conflict in favor of the Graham case, in view of the later cases of *Sutliff vs. Lake County*; *Hedges vs. Dixon County* and *Graves vs. Saline County*.

But even in the Potter case the Court seems to concede that the purchaser must look to the certificate required to be made out by the county commissioners. A purchaser of the Gunnison county bonds, if he had done this, would have ascertained that there was a flat contradiction between the certificate and the recital in the bond. The certificate showed that there was an indebtedness of $174,000. The recital was that the amount of indebtedness did not exceed $14,400.

The concluding sentence in *Sutliff vs. Lake*

County should control this case. Mr. Justice Gray says:

"The case at bar does not fall within *Chaffee County vs. Potter*, and cannot be distinguished in principle from *Dixon County vs. Field* or from *Lake County vs. Graham*. The only difference worthy of notice is that in each of these cases the single fact required to be shown by the public record was the valuation of the property of the county, whereas here two facts are to be shown, the valuation of the property and the amount of the county debt. But, as both these facts are equally required by the statute to be entered on the public records of the county, they are both facts of which all the world is bound to take notice, and as to which, therefore, the county cannot be concluded by any recitals in the bonds."

Sutliff vs. Lake County, 147 U.S., 230.

The two facts mentioned in this language of Mr. Justice Gray, namely, the valuation of the property and the amount of the county debt, are expressly required to be entered on the public records of the county, and, as stated in that opinion, they are both facts of which all the world is bound to take notice, and as to which the county cannot be concluded by any recital in the bond. The Court will note that the language is most sweeping in its character, and that as to these facts the county can not be concluded by any recital in the bond. We call attention to the argument upon this point filed in the Lake county case already referred to.

It might be well to call attention to our theory of this case for the purpose of having the Court once and for all pass upon the mooted question. Our theory is, that where a constitutional limitation is placed upon any subordinate state authority that this limitation is absolute, and that such subordinate authority cannot by any method get around this restriction of the constitution. If the constitution

itself, in the language used, creates any subordinate tribunal and by a fair implication makes the decision of that subordinate tribunal binding, such decision of such tribunal would be a constitutional decision and would be a full compliance with the constitution itself. But if a mere legislative tribunal attempts to pass upon some such question in contravention of the express provision of the constitution, it is of no more weight or effect than as though it were any other mere voluntary body acting upon its own authority and without recognition from state or municipal authorities. That is to say, as this Court has expressly said in two or three decisions, facts of the kind in controversy here can not be concluded against the express language of the constitution by any tribunal established by the Legislature. The requirement of the constitution must be complied with, and can not be evaded by any legerdemain practiced by any persons claiming to act as county officers or to carry out provisions of statutes passed by the Legislature. These constitutional provisions were placed in that instrument by the whole people of a state after years of bitter experience both in the territory which was about to become a state, and in older states in which the framers of the constitu- had lived, and they were placed there for the purpose of avoiding difficulties that had been created by court decisions and by unwise legislation. It was evidently the intention of the framers of the constitution that these provisions should not be evaded. If now county authorities can, by any recital of something as a fact that is not a fact, evade these provisions, then it is futile to attempt to restrain any action upon the part of public officers. If this court, the final arbitrator of all questions of this kind, gives its sanction to a doctrine so revolu-

tionary in its character, then all attempts of the people to tie the hands of their servants, in the matter of incurring indebtedness, are all null and void. The contest might as well be given up, and every piece of paper issued by an agent, however unscrupulous and illegal he may be, must be paid if that agent happens to be representing the entire people of the community instead of some individual. The law has never yet carried the doctrine of agency to the extent of giving to the agent of an individual power to say that he possessed an authority which he did not. This unjust distinction has been left to public agents, whose principals are the people of an entire community. The distinction, in our judgment, ought never to have been made in the first instance; but, having once been made, and the people having attempted, by putting provisions in the most solemn documents known to the American citizen, to take it away, we think the intention of all the people ought to be made to prevail.

Fifth—The Court erred in holding the bonds from which the coupons were cut to be valid obligations of Gunnison county.

The arguments advanced under the four preceding heads necessarily establish this position. The Circuit Court held that the plaintiff was not entitled to recover, because the coupons were cut from bonds of Gunnison county that were void. We refer the Court to the language used by the Judge of the Circuit Court in his instructions to the jury. While the reasoning of the trial court is not part of the record, in a way, it is still such a clear and concise exposition of the law, that we commend it to this Court. His Honor, Judge Hallett, has tried so many of these cases, and he

is so thoroughly familiar with all the provisions of the law, both constitutional and statutory, existing in Colorado, that he speaks with more than ordinary authority upon it. It is also interesting to know that upon these points this Court has always sustained Judge Hallett's conclusions. It follows that if Judge Hallett was right in admitting in evidence the semi-annual statements and other evidence refered to, that the indebtedness represented by these bonds was illegal and void. The county clearly proved that the warrants which were surrendered and went into the bonds in controversy were illegal and void because issued after the limitation of indebtedness had been reached.

A county warrant, or any evidence of indebtedness, issued after the limit of indebtedeess had been reached by a county is *prima facie*, void, and when the defendant introduced in evidence the warrants which had been issued for these bonds, and it appeared that they were issued after the limit of indebtedness had been reached, it made out a *prima facie* case of want of power to issue the bonds. All of the authorities sustain this position.

The semi-annual statements of indebtedness contained a reference to a bond issue of $20,000. This alone would render all the warrants which went into these bonds illegal and void. But the conclusions of Judge Hallett, with the testimony before him, and with other testimony which the law will presume was in the record and in a sufficient amount to sustain his conclusions, is binding upon this Court, and upon the undisputed facts in the case there can be no room for controversy upon this position. If the semi-annual statements, the record of indebtedness and the warrants themselves

were proper evidence, we do not presume that counsel for the respondent will question that these bonds were illegal and void.

We, therefore, submit, for all of the reasons gone over, that the judgment of the Circut Court of Appeals should be reversed.

Respectfully submitted,

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Fo. 275. 178.

Brief of Richardson for Respon

No. 475

Filed Oct. 11, 1897.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON,
Petitioner,
vs.
E. H. ROLLINS & SONS, (a Corporation),
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR THE WRIT OF CERTIORARI.

H. B. JOHNSON,
EDMUND T. RICHARDSON,
Attorneys for Respondent.

Collins Print, 1430 Larimer, Denver.

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BRIEF IN OPPOSITION TO THE PETITION FOR THE WRIT OF CERTIORARI.

As we are advised by the petition for the writ of *certiorari* in this cause, the application is founded upon the terms and provisions of section 6 of the Act of Congress of March 3, A. D. 1891, in relation to the establishment of a Circuit Court of Appeals, etc. Were it not for the exceptions found in that section, this action is one

which would be absolutely final in the jurisdiction of the United States Circuit Court of Appeals for the Eighth Circuit. It is not pretended that the application is made for any other reason than that the Supreme Court, in the exercise of the discretion confided to it by the fifth paragraph of the section, has a right to review the decision of the Circuit Court of Appeals if it shall elect so to do. The decision complained of, which the petition seeks to reverse, is found in 80 Fed. at page 692, and closes in this language; "The judgment of the Circuit Court must be reversed and the cause remanded for a new trial." It will be seen from this language that, while it is admitted that were it not for the excepting clause, the jurisdiction of the Court of Appeals would be final, yet nevertheless the decision which was rendered does not constitute a final determination of the cause. If then this court should take jurisdiction under its supervisory power by the writ of *certiorari* it is plain to be seen that should the court concur in the conclusions, or any of them, arrived at by the Court of Appeals, the cause will nevertheless have to be returned to the Circuit Court for a new trial. In that aspect of the case, we are constrained to suggest to this court that it decline to take jurisdiction at present, in any event until the Circuit Court and the Circuit Court of Appeals have agreed upon a decision therein. It will be time enough for this court to exercise the supervisory power confided to it at a time and upon an occasion when it is impossible for a losing party to go further in the cause. When such a time arrives it will be sufficiently soon, in our opinion, under the adjudications which have been made upon applications of a similar character, for this court to look into the merits of the cause. This case does

not fall within any of the cases, so far as we are able to ascertain, where the writ has been granted by this court. The interest to be subserved here affects only the inhabitants of a county and the property owners therein, on the one hand, and the owners of the bonds and coupons of the county, on the other hand. There is here no international principle of law in question, and no great harm immediately impending against anybody by virtue of the decision which has been rendered. We therefore confidently expect that the court will decline to exercise its supervisory jurisdiction, at least until one of the parties can come to this court and say, we can go no further unless this court will take jurisdiction; we have suffered and are without remedy elsewhere. Such investigation as we have been able to make would indicate that such will be the action of this court in the premises.

Rice vs. Sanger, 144 U. S. 197.

Chicago, etc. R. R. Co. vs. Osborn, 146 U. S. 354.

American Construction Co. vs. Jacksonville T. K. & W. R. Co. 148 U. S. 372.

Forsyth vs. Hammond, 166 U. S. 506.

Not knowing, however, under the rules so far laid down by the Supreme Court, exactly when the court will and will not take jurisdiction of a cause by granting the writ, we are not justified in resting at this point. We will, therefore, take up and consider with what degree of hasty preparation the time has enabled us to make since the service of the notice, the petition and brief of the other side.

Fifteen distinct assignments of error, touching the

decision of the Court of Appeals, have been made. These assignments, however, are discussed under two propositions in the brief, which may be distinctly stated as follows:

First: It is claimed that the Court of Appeals was without authority to consider the question of the *bona fides* of the plaintiff, because the bill of exceptions did not purport to contain all of the evidence.

Second: It is claimed that the semi-annual statements and the record of proceedings of tho Board of County Commissioners, which were sought to be introduced in evidence, were properly receivable for the purpose of constructive notice.

We will discuss these two propositions in the order suggested.

I.

It is claimed that the Court of Appeals was without authority to consider the question of the bona fides of the plaintiff, because the Bill of Exceptions did not purport to contain all of the evidence.

The opinion itself is the best answer to the contention of counsel upon this point. The basis upon which the opinion was rendered was that the semi-annual statements were insufficient to charge anyone with constructive notice and the court below having held that they were admissible for that purpose, and having instructed the jury to return a verdict for defendant upon that theory, it became imma-

terial whether or not the plaintiff was a *bona fide* holder of the bonds in suit. Inasmuch as the court was constrained to hold that such a ruling was erroneous, the question of whether or not the plaintiff was a *bona fide* holder should have been submitted to the jury. It is true that the court remarked that as to five of the bonds it was clear, under the record which the court had before it, that the plaintiff was a *bona fide* holder within the meaning and intent of the law upon that subject. But the point upon which the case was decided simply caused the Court of Appeals to observe, that entertaining the view it did of the so-called semi-annual statements, and it appearing from the record which it had before it that the plaintiff was a *bona fide* holder of five of the bonds, and might or might not be the *bona fide* holder of the other five bonds, that in any event the question of *bona fides* was a question for the jury, which would have to be disposed of in a new trial. Nor will the ingenious reasoning of astute counsel be able to convince this court otherwise after a mere glance at the opinion filed. The court say: (80 Fed. p. 700): "The testimony contained *in the present record* shows, we think, without contradiction, that the plaintiff was a *bona fide* holder, when the suit was brought, of at least five of the bonds which are involved in the present controversy, because it holds the title of Joseph Standley, who was himself an innocent purchaser of said bonds, before maturity, for the price of 98 cents on the dollar. * * * Whether the plaintiff acquired the last mentioned bonds under circumstances which constitute a *bona fide* holder is a question which may require the consideration of a jury, and we shall not undertake to decide it *on the facts preserved in the present record.* The testimony above con-

sidered appears to have been admitted by the trial court on the assumption that it was competent, even as against a *bona fide* purchaser of funding bonds, for the purpose of impeaching the bonds; and as *we cannot concur in that view*, the judgment of the Circuit Court must be reversed, and the cause remanded for a new trial."

If the foregoing language means anything, it means exactly what it says, to-wit: That because of the reversal of this cause for another reason, in the light of that reason it may become necessary to take the opinion of the jury upon the subsidiary point. It is not true that the court, after refusing to review or consider the weight of the testimony so as to determine whether the peremptory instruction of the court was right or wrong, then proceeded to take up and discuss and decide that the instruction was wrong on the evidence which was offered, and we are surprised that counsel should contend for such a proposition before a court of this character.

There is, therefore, but one question which merits any consideration whatever at the hands of this or any other tribunal, as affecting the correctness of the conclusion arrived at by the Court of Appeals, viz. the second proposition, which we will now proceed to discuss.

II.

It is claimed that the semi-annual statements and the record of proceedings of the Board of County Commissioners, which were sought to be introduced in evidence, were properly receivable for the purpose of constructive notice.

For lucidity of statement and accurate definition of the position taken, it would be difficult for anyone, and entirely impossble for the writer, to add anything to or improve upon the language of the decision as promulgated by Judge Thayer, and concurred in by Judges Sanborn and Lochren. But we will attempt to analyze the position taken by counsel for petitioner, and we would like to have our remarks considered in connection with the decision.

It is claimed that semi-annual statements of Gunnison county made for the periods ending respectively December 31, 1881, June 30, 1882, and December 30, 1882, showed respectively the total indebtedness of the county, including bonds and warrants outstanding, to have been $77,559.01 for the first period, $118,691.49 for the second period, and $284,763.05 for the third period, and that a certified copy of the officers' proceedings, bearing date shortly prior to the issuance of the bonds, recited that the floating indebtedness of Gunnison county on August 21, 1882, amounted to $174,115.29. The certificates of the assessed valuation were also received in evidence showing that in the year 1880, which would end under a recent decision of our Supreme Court (see Standley vs. Lake County, 49 Pac. 23,) on September 1, 1881, such valuation was below the million-dollar mark. The assessment of 1881, which

would terminate on the 1st of September, 1882, was slightly above the million-dollar mark, and the assessment of 1882, which was the one governing at the time of the issuance of the bonds in question, amounted to the sum of $2,340,955.

Section 1 of the Funding Act of September 21, 1881, prescribes and defines the duty of the Board of County Commissioners in such a case as the one at bar. In the latter part of the section this language appears: "The whole amount of bonds issued under this act shall not exceed the sum of the county indebtedness at the date of the first publication of the aforementioned notice, *and the amount shall be determined by the county commissioners, and a certificate made of the same, and made a part of the record of the county.*" It will be observed, in the first place, that the complaint of counsel, with reference to this matter, is not well taken, because the act is dealing with the floating indebtedness of the county as a basis for the exchange of the evidences of such floating indebtedness for bonds. It then provides that the whole amount of the bonds shall not exceed the sum of the county's indebtedness. We pause here to remark that a county can have no floating indebtedness whatsoever except lawful indebtedness. The section is not dealing with anything except the actual *bona fide* debts of a county; and as the authority must be lodged somewhere to determine what that indebtedness is, in any case where bonds are proposed to be issued, the authority is lodged by this statute in the most natural place in the world, towit, in the Board of County Commissioners of the county, and the language is of such a character that it admits of no doubt that the amount of this indebtedness shall be determined; that is, not only

ascertained, but fixed upon, decided and promulgated by the Board of County Commissioners. In other words, *determined*, and a certificate made of the same. The lawmakers observed that under the constitution it was necessary, as we shall presently see, to ascertain several things in making up this determination. First, what is the assessed valuation of the county? Second, what has been the assessed valuation of the county for the years gone by in which the warrants were issued representing the indebtedness which the county had contracted? Third, what present indebtedness can the county have under the constitutional inhibition? Fourth, what indebtedness did it have prior to the time that it reached the million-dollar valuation? Fifth, what indebtedness, if any, was the county responsible for before the adoption of the constitution in 1876? And when the county board had passed upon these matters, and segregated the warrants in such a manner as to ascertain when the indebtedness was contracted which was represented by the warrants, they were then to determine the gross sum of the valid indebtedness, make a certificate thereof, put it on the records of the county where anybody might see it, and ascertain the character of it. What was the object of this section? It was for the express purpose of advising the proposed bondbuyer of the exact amount of the county's indebtedness, as ascertained and certified to by the authority to which the law confides the making of the certification. Counsel's argument might be well taken provided this county had, after ascertaining that its valid floating indebtedness amounted to $174,000 odd, thereupon issued bonds to the extent of $300,000, or any other sum larger than $174,000, and the act itself recognizes that such a thing was impossi-

ble to be done, for it provides,—and that was the thing which was the warning to the bond-purchaser,—that any bond issued in excess of the sum of the county's indebtedness, so determined by the Board of County Commissioners, should be null and void. As a further check upon the Board of County Commissioners, it was required that each bond should be registered with the auditor of the state as the same was issued.

In view of this analysis, and of the language used by the learned Thayer, it seems to us that this court will not agree with the contention of counsel, that the board was under the mere perfunctory obligation of simply adding up all of the purported items of indebtedness which were out-standing against a county, and thereby became, in the language of the brief filed on the other side, a simple adding machine for the purpose of finding the result in a matter of simple addition. If such be the position intended by the framers of the statute, then the statute were worse than useless, because anybody could have taken these semi-annual statements and made the same addition.

But entirely irrespective of that proposition, there is a second and much better reason for the conclusion at which the Circuit Court of Appeals arrived, even though the statement thus made by the Board of County Commissioners should in all respects conform to a computation made under the various semi-annual statements as contended for by counsel. Counsel treats the issue of a warrant as synonymous with the *creation* of a debt. This view has been expressly repudiated in a number of decisions, notably in the case of Wilder vs. Board of County Commissioners of Rio Grande County, 41 Fed. 512; also in Standley vs. Board of County Commissioners of Lake

County, 49 Pac. 23. A warrant is but the evidence of a debt, even if it arises to that distinction. It is, in strict legal parlance, simply an order by one county officer upon another county officer who has the custody of the county funds. It is a voucher used by the custodian of the funds to account for the disbursement of such funds; and the mere fact, if it be a fact, that it would have been seen by an examination of the semi-annual statements, as contended for by counsel, that large amounts of warrants were being issued between the various semi-annual statements provided for by section 30 of the act of March 24, 1877, is no evidence, not even the slightest, that the indebtedness represented by such warrants was *contracted* at a time when the constitutional inhibition of section 6 of article 11 of the state constitution of Colorado was in force as to this county. In fact the warrant indicates that the indebtedness thereby represented, if represented at all, was an indebtedness which had been contracted before, and the warrant was simply the means by which the funds in the treasurer's hands could be gotten at for the payment of such indebtedness.

We have no fault to find with, and we are equally as swift in eulogizing the conclusions promulgated by Judge Sanborn in the case of the National Life Insurance Co. vs. Board of Education, 62 Fed. Rep. 778, as counsel on the other side. Counsel adroitly quoted one of the conclusions from that case, we desire to be permitted to quote the other.

"Where a municipal body has lawful authority to issue bonds or negotiable securities, dependent only upon the adoption of certain preliminary proceedings, and the adoption of those preliminary proceedings is certified on the

face of the bonds by the body to which the law intrusts the power, and upon which it imposes the duty, to ascertain, determine, and certify this fact before or at the time of the issuing of the bonds, *such a certificate will estop the municipality, as against a bona fide purchaser of the bonds, from proving its falsity in order to defeat them.*"

Citing Chaffee Co. vs. Potter, 142 U. S. 355, and eighteen other decisions promulgated by this Honorable Court.

Our constitution prescribed a limit of indebtedness as based upon the question of an assessment; it then prescribes that certain exceptions over and above the amount therein limited shall be lawful, valid and binding upon the various counties; and in pursuance of that section the law-makers prescribed a way to determine what the real amount was. This board, in this case, did prescribe that amount. They did make the determination of it; they did make the certificate thereof, and they announced to the world that the lawful and correct amount was $174,000 odd. It is therefore clear, First, that there was an authority to issue the bonds; Second, that the preliminary proceedings prescribed by the statute, and of which the bondholders must take notice, were all complied with; and, Third, that the amount of such bonds are not in excess of the preliminary determination so prescribed. Wherein then is the county not estopped from denying and asserting to the contrary? What rule of law, either in Dixon Co. vs. Field, or any similar case, requires this bondholder to go behind that determination and ascertain for himself the facts required to be ascertained and determined by the Board of County Commissioners? If estoppel does not arise in this case, wherein was there any reason for assert-

ing the doctrine of estoppel as announced in the Chaffee Co. case and those similar in character?

The brief which we have under consideration seems to promulgate the idea that if the bondholder, by any hook or crook, could possibly ascertain that the issue of bonds exceeded the constitutional limit, yea, even if such issue did exceed the constitutional limit, even though neither he nor anyone else could by any possibility have ascertained it from the records of the county, yet nevertheless, under the doctrine of Dixon Co. vs. Field, 111 U. S. 83, the bondholder would not be permitted to recover in this action. We do not so read the case of Dixon Co. vs. Field We understand that, notwithstanding the fact that there may be a constitutional limit of indebtedness, and notwithstanding the fact that a county has issued bonds in excess of that limitation, yet in a certain class of cases, to which the case of Chaffee Co. vs. Potter belongs, such bonds may be binding upon the municipality which issued them.

Section 2 of Article 12 of the Nebraska constitution, which was under consideration in the case of Dixon Co. vs. Field, as found at page 87 of 111 U. S., provides that a county in attemping to make donations to a railroad company should not exceed 10 per centum of the assessed valuation of the county. In that case Dixon county was attempting to issue $87,000 worth of bonds, each bond reciting the act under which it was issued, and the total amount. It was held that inasmuch as anybody, with the constitution in one hand, and the bond of the series in the other, could ascertain by glancing at the assessed valuation for the year in which the bonds were issued, that the whole amount of such issue could in no event exceed $58,733 that

such bonds were void, and that no recital in the bond could estop the county from asserting such invalidity, because upon the face of the bonds, and the recitals therein contained, a falsification of the statement would be made to appear. On the other hand, in Chaffee Co. vs. Potter where a bond identical in form with the bond here under consideration was before this court for determination, the court said that no one with one of the bonds in one hand, and the constitution in the other, either with or without a consideration of the assessed valuation of the county, could say whether the total amount of such bonds were valid or invalid, and they therefore held that such bonds were valid.

Counsel are driven to great lengths in their argument to avoid the force and effect of this decision. They claim that the attention of the court was not, in that case, called to the same facts which exist here; that had the attention of the court been called to the fact of these semi-annual statements, the court would have said, in counsel's opinion, that the purchaser of the bonds was as much required to take notice of section 30 of the act of March 24, 1877, as he was required to take notice of section 1 of the funding act of August 21, 1881, under which the bonds were issued. The Court of Appeals do not agree with counsel. Neither do we. But let us admit for a moment, for the purpose of argument, that we do agree with counsel, and that we were required to take notice of the semi-annual statements provided for by section 30 of the act mentioned. Of course, the examination of such statements should take place in the light of the constitutional provisions. Section 6 of article 11 of the constitution provides, that while it is true that counties in which the assessed valuation of taxable

property shall exceed five million of dollars, should never have an indebtedness in excess of $3 on each thousand thereof; and counties in which the valuation shall be less than five million of dollars, should not have an indebtedness in excess of $6 on each thousand thereof, except by a vote of the people; and that such indebtedness as is hereinbefore mentioned should not be created to an amount greater than one-half of the above sum in any one year, the same section also provides that there shall be excluded from the consideration of this amount all debts contracted before the adoption of the constitution, and there should likewise be excluded all debts which had been incurred up to the time that the county reached the valuation of one million dollars in the provision that "this section shall not apply to counties having a valuation of less than one million of dollars." If the section did not apply up to the time the county reached the one million dollar limit, so far as that county or anything which it did was concerned, this section was precisely the same as though it had never been. When, and not until, the county reached the million-dollar valuation the section became applicable to it. We therefore conclude that in determining the amount of county debts, something more than a mere computation was called for by the constitution.

Gunnison County was created by the act of March 9, 1877, found in the General Laws of 1877, at page 213 *et seq.* By section 7 of that act it is provided that "the present indebtedness of the county of Lake shall be apportioned between the counties of Lake and Gunnison in proportion to the taxable property in each as shown by the assessment roll for the year 1876." It will be seen, therefore, that Gunnison County, at the very time of its cre-

ation, started out with an indebtedness belonging theretofore to Lake County. It will be further seen that Lake County was among the original counties created by the first legislature which ever sat in the territory of Colorado. See section 33, page 57, of the Session Laws of 1861, as found in the Revised Statutes of 1868, at page 162. Clearly then Gunnison County had an indebtedness which was contracted before the adoption of the constitution. The constitution was adopted on the first day of August, A. D. 1876, and was ratified by the president of the United States in a proclamation promulgated on the 24th day of that month. This record shows that the county did not reach the million-dollar mark until the first day of September of 1881, and all indebtedness which had accrued prior to that time must, of course, be excluded in the computation which the commissioners were required to make. From the first day of September, 1881, down to the 21st day of August, 1882, the only contention which is presented, either in the record or in the brief of counsel on the other side, is that a large amount of warrants were issued. An examination of Exhibit "H" will fail to show anything inconsistent with the proposition that the total amount of the county's indebtedness might have been entirely compatible with the constitution of the state of Colorado. No man can examine that statement and determine from it when a single cent of the indebtedness purported to be represented by it was contracted. So that if we adopt counsel's contention that we were required to take notice of these statements, as the Court of Appeals did not, we are certainly entitled to stand on the broad language of the Court of Appeals by adding thereto, in brackets, as follows: "It may be conceded, though not decided, that a

purchaser of bonds in question was affected with notice of all the facts disclosed by the record of the proceedings of the board which culminated in the issuance of the bonds [and all of the semi-annual statements introduced in evidence]; but, notwithstanding this concession, we are of opinion that the record made by the Board of County Commissioners [and of the semi-annual statements] disclosed no facts rendering the bonds void in the hands of an innocent purchaser for value." If upon any theory the bonds can be held valid, it is the duty of the court to so hold them. The holder of a negotiable bond does not come into court with every presumption and intendment of law against his bonds; he rather comes there with every presumption and intendment in his favor; and if the county desires to avoid his bonds they must do it by evidence so clear and satisfactory that the court cannot escape the conclusions that the purchaser either knew or in law must have known that the bonds which he purchased were invalid. In the light of this record, showing as it does that these bonds were selling for 98 cents on the dollar, and that too in a country where the customary rate of interest for short time loans at that date ran from 18 to 36 per cent per annum, when we have before us for consideration an 8 per cent bond, the price speaks volumes for the consideration in which the bonds were held before this county attempted to repudiate them. So that there would seem to be no escape from the conclusion at which the Court of Appeals arrived, even though we take into consideration the semi-annual statements which the Court of Appeals refused to do. The reasoning is precisely as good in the one case as in the other, and while, as a matter of law, the decision of the Court of

Appeals was right, it would have made no difference in fact had they placed it upon the other ground of requiring the respondent to take notice of the semi-annual statement instead of the statement provided for by the Funding Act itself. The conclusion would have been the same in either case.

It is difficult to see the force of counsel's remarks as applied to the Sutliff case, found in 147 U. S. This court expressly held in that case "that the case at bar does not fall within Chaffee Co. vs. Potter, and cannot be distinguished in principle from Dixon Co. vs. Field, or from Lake Co. vs. Graham." This case is precisely on all fours with the Chaffee County case. This is the Chaffee County bond *verbatim et literatim*, drawn, as counsel say, by the same cunning hand.

If counsel had fully considered the Sutliff case (although it is immaterial if the last position which we have taken is true that notice of the semi-annual statements would not change the result), counsel would have seen that the court, in rendering the decision, drew the distinction sharply between the Sutliff case and the case of Chaffee Co. vs. Potter, in this language: "That decision (referring to Dixon Co. vs. Field) and the ground upon which it rests were approved and affirmed in Lake Co. vs. Graham, and Chaffee Co. vs. Potter, above cited, each of which arose under the article of the constitution of Colorado now in question, *but under a different statute, which did not require the amount of indebtedness of the county to be stated* on its records." If that language was not authority for the conclusion arrived at by the Court of Appeals in distinguishing the case at bar from the Sutliff

case, then the language used does not convey the meaning which the court intended it to convey.

Our contention is, and ever has been, that one might be charged with all of the knowledge contained in all of the records of Gunnison County which have been introduced, or sought to be introduced in evidence, and with one of these bonds in his hand or all of them for that matter, he would be unable to say, as a matter of fact, that the constitutional limitation had been exceeded. If the amount represented by the bonds had been invalid, and under the decision of Chaffee Co. vs. Potter it is immaterial whether such indebtedness is valid or invalid, the county is estopped from asserting the contrary. It is only by inferring something, viz. that the *issuance* of a warrant *creates* a debt and by ignoring the constitutional exceptions that you can arrive at the conclusion that Gunnison county had an excess debt funded in in these bonds.

How counsel is able to conclude that there is no discrepancy between the certification made by the Board of County Commissioners under section 1 of the act under which the bonds were issued and the semi-annual statements provided for by section 30 of the act of 1877, passes comprehension. These statements do not purport to be made as of the same time as the statement required by the funding act. And after asserting and repeating that no discrepancy exists between the two, counsel say after a comparison of them that "it will be found that the amount must have been just about the sum certified by the commissioners." If it were pertinent to this matter, it would not take very long to determine, as a mathematical proposition, that a discrepancy does exist between two things

which are being compared, when, as a matter of fact, one is just about the same as the other. Counsel's conclusion is neither good logic nor good mathematics. But however that may be, we have already shown that whether there be such a discrepancy or not is wholly immaterial. It may be remarked however in passing that the Court of Appeals did not assert that there was any discrepancy. They simply say that if a discrepancy did exist, then the statement called for by the act itself would be controlling.

There remains but one additional matter for our consideration before closing this brief, and that is as to the ruling of the court upon the question of the admission of the three lists of county warrants which were surrendered to the county by the owners in exchange for some of the funding bonds in the suit. It is explained by counsel that the "purpose of the offer was to show an indiscriminate exchange of valid and invalid warrants for funding bonds." This is a begging of the entire question. What warrant in that list, which was successfully introduced against an objection, shows that it was for an invalid purpose? Counsel seem to assume in this particular that if they could only introduce warrants for a gross sum sufficiently large to be in excess of the percentage of the indebtedness allowed by the percentage clause of the constitution, then the county had done all that was required of it. No examination of a county warrant can determine whether or not that warrant is valid or invalid. It is only by tracing the county warrants back to the contraction of the indebtedness represented thereby that such a determination can be made, and the burden was upon the county to do that if they desired to escape the payment of the bonds for which these warrants were exchanged. In not a single in-

stance nor as to a single warrant was such an offer made. The warrants were, therefore, clearly immaterial for any purpose, and should have been excluded.

We do not assume, in these proceedings, invalidity. The presumption obtains that the indebtedness is valid until the contrary be made to clearly appear. The Court of Appeals was therefore right in holding that these lists were inadmissible in contradiction of or to overcome the recitals which the bonds in controversy contained; and even if they had been properly introduced, there could have been no assumption of invalidity therefrom except by inference. This contention is about on a par with the statement of counsel that "Rollins undoubtedly guaranteed the validity of the bonds to him (Standley) or he would not have repurchased them upon the threshhold of the suit," a matter which nowhere appears in evidence.

The complaint that the Court of Appeals overlooked the fact that these coupons were sued upon, first in the name of Potter and afterwards in the name of Sanders and Proby seems to be a cause of great grievance to counsel; but we are unable to see from his complaint what he predicates upon the failure of the court to so overlook this fact. If the bonds were Standley's, the fact that somebody else attempted to sue upon them could in no manner prejudice Mr. Standley's rights, and as counsel fail to show wherein their grievance lies upon this part of their brief, we shall pay no further attention to it.

There are numerous matters touching the details of this cause which we are unable to go into in this brief for lack of time in which to prepare and present it to this court within the limit of the notice served upon us, but we have treated these matters somewhat extensively in the

briefs which we have caused to be filed in the Court of Appeals; and we ask, in connection herewith, to file a few copies of our brief there used, so that the court may look into it in connection with the questions here under consideration.

The conclusions of the Court of Appeals were unquestionably right. The reasons given for such conclusions were just as unquestionably right. The reasons, whether right or wrong, cannot affect the righteousness of the conclusions. The application for the writ of *certiorari*, therefore, ought to be denied.

Respectfully submitted.

H. B. JOHNSON,

EDMUND F. RICHARDSON,

Attorneys for Respondent.

FILED
DEC 10 1898
JAMES H. McKENNEY,
Clerk.

THE BOARD OF COMMISSIONERS OF THE COUNTY OF ARAPAHOE, STATE OF COLORADO,

Petitioner,

vs.

B. H. ROLLINS & SONS,

Defendant.

On Writ of Certiorari to the Supreme Court of Appeals for the County Circuit.

Brief for B. H. Rollins & Sons.

JOHN K. DILLON,
HARRY HUBBARD,
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EDMUND J. RICHARDSON,
Of Counsel.

C. W. Burgess, Printer and Station'r, Denver, Col.

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Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 178.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, State of Colorado, Petitioner,

AGAINST

E. H. ROLLINS & SONS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR E. H ROLLINS & SONS.

Statement of Case.

This is an action at law begun March 1, 1895, in the Circuit Court of the United States for the District of Colorado, by Messrs. E. H. Rollins & Sons, a corporation organized and existing under the laws of the State of New Hampshire, to recover judgment on coupons attached to certain negotiable funding bonds, dated December 1, 1882, issued by the County of Gunnison, State of Colorado (Complaint, Record, pp. 1–7). A

copy of the said bonds and the coupons thereto attached is set forth at length in the complaint (Record, pp. 2, 3). The said bonds contain the following recital, to wit (Record, p. 2):

"This bond is issued by the Board of County Commissioners of said Gunnison County in exchange, at par, for valid floating indebtedness of said county outstanding prior to September 2, 1882, under and by virtue of and in full conformity with the provisions of an act of the General Assembly of the State of Colorado entitled 'An act to enable the several counties of the State to fund their floating indebtedness,' approved February 21, 1881; and it is hereby certified that all the requirements of law have been fully complied with by the proper officers in the issuing of this bond. It is further certified that the total amount of this issue does not exceed the limit prescribed by the Constitution of the State of Colorado, and that this issue of bonds has been authorized by a vote of a majority of the duly qualified electors of the said County of Gunnison, voting on the question at a general election, duly held in said county on the 7th day of November, A. D. 1882."

The defense relied on is that the bonds were issued in excess of the debt limit of the County as fixed by the Constitution of Colorado. There was by direction of the Circuit Court a verdict and judgment in that Court for the defendant. On writ of error, this judgment was reversed by the Circuit Court of Appeals, to which Court the present Writ of *Certiorari* issued from the Supreme Court.

The coupons in suit (amounting in all to $5,200) were taken from bonds Nos. 9 to 13, inclusive, Nos. 63 to 66, inclusive, and No. 98, of $1,000 each, aggregating $10,000 (Record, pp. 5, 33, 36). Plaintiff purchased these bonds from Joseph Standley and paid full value for them (Record, pp. 37, 98, 99). Said Joseph Standley had purchased said bonds for value as follows:

he had surrendered to the County warrants for $5,000 of the bonds and purchased the other $5,000 of bonds from Rollins & Young, for cash, in June, 1883 (Record, p. 36). Mr. Standley testified that he had no knowledge of the amount of bonds that were being issued by Gunnison County, in funding its debt, and no notice or knowledge that there was anything irregular or illegal about the issuance of the bonds; that for the bonds he purchased he paid 98 cents on the dollar, and that he was the owner, for value, of the warrants that were exchanged for the others; that he remained the owner of these ten bonds until June, 1892, when he sold them, together with certain coupons attached thereto, to plaintiff, for $14,000 (Record, pp. 36, 37, 98). He further testified that he was paid interest on the bonds; and he thought all coupons were paid up to and including coupon No. 6 and a part of No. 7 (Record, pp. 42, 43). This evidence, together with the coupons in suit, and a sample of one of the bonds, with evidence showing them to have all been the same in form, and some further testimony, showing the purchase of the bonds and the present ownership of these coupons, constituted plaintiff's case. It was admitted that prior to 1881 the assessed valuation of this county did not reach $1,000,000 (Record, p. 47).

THE DEFENDANT OFFERED IN EVIDENCE, and the Court admitted over the objection of plaintiff, the abstracts of the assessments for the years 1880, 1881 and 1882, which showed that the assessed valuation for 1880 was $596,583; in 1881, $1,266,962, and in 1882, $2,340,955 (Record, pp. 46, 47).

The defendant then offered in evidence a copy of a pretended financial statement for the six months ending December 31, 1881 (made under the Act of March

24, 1877, and not under the Act of February 21, 1881, recited in the bond), to which the following objections were made by the plaintiff, and to its admission an exception was saved (Record, pp. 47, 48):

"FIRST. The bonds having been issued on the 1st day of December, 1882, the semi-annual statement of June 30, 1882, would be the material statement, if any one would be, and this one is not material.

"SECOND. That it has not been shown that this semi-annual statement was published in a newspaper, or by posting, as the law requires, and that the recording thereof is only authorized in regard to a semi-annual statement that has thus been published.

"THIRD. That the statement on its face is not in compliance with the statute, and is not sufficient to bring home to the purchaser of bonds any actual knowledge of the indebtedness that is outstanding, and particularly any knowledge of the validity or invalidity of such indebtedness.

"FOURTH. Because the semi-annual statement provided by a certain statute is not required to be kept, either by the Constitution or by the statute under which these bonds were issued, and, therefore, the purchaser cannot be required to take any notice of the same.

"FIFTH. Because the funding act under which these bonds were issued vested in the Board of County Commissioners the power to compute the amount of the valid outstanding indebtedness of the county, and to make a certificate in reference thereto, and these bonds having recited on their face that they were issued to fund valid floating indebtedness, a purchaser would not be bound to investigate this record.

"SIXTH. Because this semi-annual statement offered in evidence does not attempt to show when the indebtedness mentioned therein was contracted, or whether it was contracted prior to the adoption of the Constitution or after such adoption, or whether it was contracted prior to the time the assessed valuation of the county reached a million dollars, or after that time, and that for these various reasons a purchaser would actually receive no notice or knowledge from the face of this semi-annual statement as to whether this indebtedness that was being funded by the issuance of these bonds was valid or invalid.

"SEVENTH. Because said indebtedness has been validated by constitutional amendment."

The Court nevertheless admitted said pretended financial statement in evidence marked "Exhibit G" (see Record, p. 108), to which ruling the plaintiff excepted (Record, p. 48). This ruling, as well as all of the other rulings below mentioned, was assigned as error in the Circuit Court of Appeals (Rec. pp. 158–162).

The defendant then offered in evidence a copy of another pretended financial statement for the six months ending June 30, 1882, and still another for the six months ending December 31, 1882. These documents were objected to for all the reasons above stated, and because this latter statement was made after the issuance of the bonds. These objections were all overruled, the evidence was admitted, and exceptions were duly saved (Record, p. 48). These statements (including the one first referred to) appear in the Record, at pages 108–121, as Exhibits G, H and I. The Court's charge shows that this evidence erroneously admitted, controlled the result (Record, pp. 69–71, 182). The Circuit Court of Appeals held that this testimony was erroneously admitted (Record, pp. 182–184).

The defendant next offered in evidence (Record, p. 48), a copy of the official proceedings of the Board under the funding act under which these bonds were issued, to which an objection was made as follows:

"We object to the introduction of these orders and proceedings of the Board of County Commissioners upon the ground that under the funding act a purchaser of bonds with recitals such as are contained in this bond would not be required to take notice of the procedure of the Board leading up to the actual issue and execution of the bonds; that the recitals in the bond as to the antecedent proceedings or the regular procedure will be conclusive."

This objection was overruled, the proceedings were admitted in evidence, and an exception was duly taken (Record, p. 49). Said proceedings appear in the record in this case, pages 121–135, as Exhibit J.

The defendant then introduced T. J. Maloney, who testified that while these bonds were all dated as of December 1, 1882, they were actually signed and delivered, from time to time, during a period of over one year from their date, as warrants came in to be exchanged for the bonds. The Treasurer did not countersign the bonds only as they were actually exchanged for warrants, which transaction went on during all the year 1883 and probably into 1884 (Record, pp. 50–53). This testimony was wholly uncontradicted.

The defendant then offered to prove (Record, p. 58) that the financial statements introduced in evidence are recorded in a book of the Gunnison County records, to which the plaintiff made the following objection:

"We object to this line of testimony to prove the nature of that book. The statute requires these semi-annual statements after they have been published, as I understand the law, to be recorded in a book kept for that purpose only. Now, whether a book would be in compliance with that statute could only be determined by some label or title upon it, and that can be best determined by an inspection, and I can see no reason why that book should not be brought here, as that was one of the issues in the case, as to whether any such book had been kept, so that the Court could, at least, see it, and determine as to whether that book was such a book as is contemplated by the statute."

This objection was overruled and an exception taken (Record, p. 58).

A Mr. McCormick was permitted to testify as to the nature and contents of this book (Record, p. 58). He was not certain (Record, pp. 63–65) that it was a book

kept in which to record semi-annual statements only, and could give no definite description thereof, and there was not a *scintilla* of testimony to the effect that the book was kept at the time these bonds were issued. The witness thought there were statements recorded therein of a date earlier than the ones in question, but as to when they were recorded there was no testimony.

The plaintiff again raised the question of the admissibility of this testimony by a motion to strike the same out, which the Court overruled, and exception was taken (Record, p. 65).

The defendant then offered (Record, p. 59) certain statements and lists of warrants, together with the warrants themselves, in exchange for which the funding bonds were issued, to which plaintiff made an objection as follows (Record, p. 59):

"We object to the introduction of these warrants and lists upon the ground that they do not distinguish in any manner as to what particular warrants Mr. Stanley exchanged for his first five bonds; and, second, that under the recitals in these bonds, and particularly as to any bonds purchased by Mr. Stanley for cash and in exchange for warrants, he is not required to take notice of the nature and character of the warrants, the dates or amounts or as to whether they were valid or invalid. Third, that the warrants, being merged in the bonds, if the bonds under their recital do not carry notice to a purchaser of the invalidity of any of this date entered into the funding, as represented by the funding bonds, then Mr. Stanley would not be impressed with notice of the invalidity of any particular warrant that may have been funded. And generally, that there is no statute or record that requires the purchaser of a bond to take notice of the warrants that have been funded; indeed, the law contemplates that these warrants, when taken in exchange for funding bonds, shall be destroyed."

Which objection the Court overruled and plaintiff excepted (Record, p. 59). The list of warrants constitutes Exhibit K (Record, pp. 135–147).

The defendant then offered in evidence a memorandum of warrants, which memorandum was said to have been used by a Mr. Seeley at the time he applied to exchange certain warrants for bonds, to which evidence plaintiff objected on the ground that a purchaser of bonds is not required to take any notice of such a memorandum, which objection the Court overruled and plaintiff excepted (Record, pp. 66). This memorandum was received in evidence as Exhibit L (Record, pp. 147–154).

The Circuit Court of Appeals held that the foregoing evidence was erroneously received (Record, p. 185).

At the close of the evidence for defendant, the plaintiff moved (Record, p. 67) to exclude these alleged semi-annual statements on the ground that it had not been shown that they were ever published as required by law. There was no attempt to show publication, either in a newspaper or by posting. This motion the Court overruled, holding that publication was unnecessary, and plaintiff excepted.

Thereupon (Record, p. 67) defendant moved that the Court instruct the jury to find a verdict for defendant. The Court then charged the jury at length, and concluded by instructing them to render a verdict for defendant, to which charge and instruction the plaintiff duly excepted, as stated below (Record, pp. 67-72).

Exceptions to the Charge of the Court.

Whereupon (Record, p. 72) counsel for complainant entered the following objections and exceptions to the instructions to the jury as given by the Court:

"The Court instructed the jury as follows:

"'There was considerable discussion in the Courts as to whether, if the county should recite in any obligation which it issued that it had complied with the terms of the Constitution and with the law of the State, and the indebtedness which had been created or which was recognized in the obligation issued was no more than was authorized under the Constitution, whether the county would be estopped by such a statement as that in the bond or other obligation that might be issued; and there were conflicting decisions in the Courts upon this subject, some of the Courts being inclined to follow the old rule which had been established in the early history of the subject, to the effect that if the municipal body recited the fulfillment of the conditions imposed upon it, it was thereby estopped from denying the fact; other Courts, perceiving that if there was an absence of power, if the county had no power to create an indebtedness, its declaration that it had such power could not be effective as a grant of power, and could not confer a power which did not exist; that there could be no rule of estoppel in any such case. And so we have it now settled that whatever the form of obligation which may be issued by a county, whatever may be declared in that obligation as to the conditions under which it is issued, the question whether the county had authority under the Constitution to issue such obligation is still open to investigation and consideration' (Record, pp. 68, 69).

"*To which charge the plaintiff objected*, upon the ground that the recital in a bond, to the effect that the same is valid and issued within the constitutional limitation, would work an estoppel the same as though such limitation were prescribed by a statutory provision, *which objection was by the Court overruled, to which ruling plaintiff then and there duly excepted*" (Record, p. 73).

(Record, p. 73 :) " The Court instructed the jury as follows :

" ' The act of the State, under which the bonds in question in this suit were issued, was passed in the year 1881. It is entitled, " An act to enable the several counties of the State to fund their floating indebtedness." In the act itself, in the title of the act and in the body of the act, the circumstance that the bonds issued pursuant to its terms are in settlement of pre-existing indebtedness is everywhere manifest. So that there is no room, in any controversy which may arise in respect to bonds issued under this act, for any contention that the bonds were issued to be sold for money in the market. They were to be issued only for funding purposes ; that is to say, to get the indebtedness existing upon the records of the county into one sum and to issue securities therefor. In the first section of the act, and towards the end of the section, it is provided that the whole amount of bonds issued under the act shall not exceed the sum of the county indebtedness at the date of the first publication of the aforementioned notice, and the amount shall be determined by the County Commissioners, and a certificate made of the same, and made a part of the records of the county. That is to say, in proceeding under the act, the County Commissioners, in the first place, were to ascertain the amount of the existing indebtedness of the county and to make a certificate of it and record the fact. Thus, they were required, by the act itself, to put upon record the amount of the indebtedness. There was an earlier act passed in the year 1877, four years earlier, which provided in its thirtieth section that the County Commissioners of each county should make semi-annual statements and publish the same in a newspaper, which statements shall show the amount of debt owing by the county, in what the debt consists, what payments—if any—have been made upon the same, the rate of interest, and so on. Also a detailed account of the receipts and expenditures of the county for the preceding months, and so on. And this statement is to be recorded in a book, to be kept by the Clerk of the Board for that purpose only. So that there were, at the time of these transactions, two acts requiring a record to be made of the indebtedness of the county, the act of 1877 requiring that this record should be made twice in each year, and the act of 1881

requiring that it should be made as a preliminary to the issue of bonds under the act. So that there is no room for controversy that there must be in the records of the county a statement and account of the indebtedness of the county. In any controversy this amount is one of the facts to be ascertained—that is to say, there must be, if a purchaser of bonds issued under the act of 1881 is to be charged with notice of facts which are to be ascertained in order to determine whether the constitutional provision has been complied with, a record of the indebtedness of the county.'

" *To which charge the plaintiff objected*, upon the grounds :

" FIRST. That said charge erroneously assumes and declares that the funding bonds in question were not negotiable securities or entitled, in the hands of *bona fide* purchasers, to protection as such.

" SECOND. That the Court erroneously assumes and declares that the purchaser of such bonds must know, at his peril, as against the recital therein, as to whether the amount of indebtedness stated in the certificate, made by the Board as a basis of the issuance of said bonds, is or is not valid indebtedness.

" THIRD. That the Court erroneously assumes that the purchaser of said bonds must take notice of the semi-annual statement provided for in an act separate and distinct from the act under which the bonds were issued.

" FOURTH. Because the Court erroneously assumes and declares that a purchaser, by an examination of said certificate and semi-annual statement, could ascertain that the indebtedness for which said funding bonds were being issued was invalid, because in excess of the constitutional limitation.

" *Which objection the Court overruled, and to which ruling the plaintiff then and there duly excepted*" (Record, p. 74).

(Record, p. 74 :) " The Court further charged the jury as follows :

" ' I have not called your attention before to the fact that the constitutional provision is that counties having a valuation of less than $1,000,000 shall not be subject

to its provisions, so that in the year 1880 there was no limitation to the County of Gunnison in respect to its indebtedness, but there was such a limitation in 1881 and 1882, at the time the bonds in suit were issued. In the discussion of these questions before the Court, counsel seemed disposed to contend that under the constitutional provision there might be an indebtedness created in each year, to the extent specified in the Constitution, whether there was any pre-existing indebtedness or not, and that the indebtedness incurred prior to the year 1881 should not be counted as part of the indebtedness existing in the year 1882, at the time these bonds were issued. There is no ground for such position. The Constitution does not at all mean that the county may, in each year, incur an indebtedness of 6 mills in the dollar or of 12 mills in the dollar, of the valuation of its property, but that the indebtedness shall at no time exceed that—that is to say, whether the indebtedness be created in one way or another, it stands as an aggregate at the time of issuing any securities, and if at that time it exceeds the constitutional limit, then there is no power to create any indebtedness whatever. But if that were not true, and if the rule be as counsel contends, the semi-annual statements put in evidence before you show that the increase in the years 1881 and 1882 was greatly in excess of the constitutional limit.'

" *To which charge the plaintiff objected upon the ground* that the Court erroneously assumes and declares that said funding bonds would be invalid if the aggregate amount thereof exceeded the constitutional limitation, irrespective of whether the indebtedness accrued prior or subsequent to the assessed valuation of said county reaching the sum of $1,000,000 (Record, p. 75).

" The Court further instructed the jury as follows:

" ' A question has been made as to whether the bonds issued in this case—I believe there were about $175,000 of them –that is the amount of indebtedness which the Commissioners found to be existing on the 1st of September, 1882, when they made up their accounts for issuing the bonds. A question has been made whether the bonds may not be valid in some part—that is, as to the part for which the county was really bound upon the warrants, because certainly there were some of the warrants valid, and the remainder to be void under the

Constitution. Counsel stated that there was in the year 1882 property in the county to incur an indebtedness of $28,000, or something like that, referring to the constitutional provision and the assessed valuation of the property within the county. And so there was some disposition upon the part of counsel to contend that there were at least this amount of bonds which can be recognized as valid and subsisting obligations of the county, even if the remainder shall be rejected. Some of these bonds in suit are of numbers which might fall below that sum; as, I believe, there were nine to thirteen which would be below $28,000, and then there were sixty-five to sixty-nine, or some number in the sixties, which would be far beyond it, and ninety-eight, which is still farther along in the dim distance. But we cannot go upon any such principle as that. The rule established in the Courts, is that if, of a series of obligations issued there may be any of them void, the Court cannot distinguish between them' (Record, p. 75).

"*To which charge the plaintiff objected upon the ground* that the evidence in the case shows that the said bonds were issued and delivered from time to time in exchange for warrants as they were presented, and, therefore, cannot be considered as having all been of one and the same issue (Record, p. 75).

"The Court further instructed the jury as follows:

"'Some question has been made also whether the plaintiff here may be regarded as an innocent purchaser of the bonds for value. If it were necessary to ascertain that fact it would, perhaps, be a matter of some difficulty. Mr. Stanley, who first came to the possession of the bonds as a holder for value, held warrants which were funded in the bonds to the extent of one-half of them, $5,000. I am inclined to think that he would not be an innocent purchaser in respect to the bonds which he obtained for those warrants. He would stand in the same position in regard to the bonds as he held in respect to the warrants which he gave in exchange for the bonds. He purchased the other $5,000 from Rollins and Young, and Rollins and Young were pretty familiar with the condition of affairs over there. They got all of the bonds, or nearly all of them, in exchange for warrants which they surrendered. Afterwards, the present plaintiff, who is the legal and perhaps natural heir of Rollins and Young, repurchased the bonds. Whether the plaintiff,

having first obtained the bonds in exchange for warrants, and afterwards repurchased them from Mr. Stanley, could now stand as an innocent purchaser, would be a matter of some difficulty if we were required to solve it in this action, but we are not concerned about that matter because the rule applicable to the case is that, if the records of the county disclose facts which show that the bonds were invalid under the constitutional provision, an innocent purchaser and every purchaser must take notice of those facts—in other words, he is bound to examine the records with a view to inform himself as to the power of the county, before he makes a purchase of the bonds. Not doing so, he is held to have purchased them with full knowledge of whatever is disclosed in the records, and in this instance the record of the county abundantly shows the amount of the indebtedness and the assessed valuation of the property of the county' (Record, pp. 75, 76).

" *To which charge plaintiff objected*, upon the grounds:

" FIRST. That the plaintiff in this case is shown to be a *bona fide* purchaser, for the reason that it holds under a *bona fide* purchaser.

" SECOND. That Stanley, having parted with his warrants in exchange for said bonds, which warrants can no longer be traced or identified, he must be considered as holding the bonds received therefor upon a valuable consideration.

" THIRD. That the evidence shows that the other five bonds were purchased by Stanley for cash, without any notice or knowledge of any fact affecting their validity.

" FOURTH. That the Court erroneously declares that the records, which said purchaser should have examined, show the invalidity of said bonds (Record, p. 76).

" The Court further instructed the jury as follows:

" 'We come to the conclusion, then, gentlemen, as a matter of law, that, upon the facts fully explained in the evidence, the plaintiff is not entitled to recover; therefore, you are relieved from determining some questions of fact which it was thought in the beginning it might be necessary to take your opinion of. We shall be compelled to ask you to render a verdict for the defendant.'

" *To which charge and to the ruling of the Court requiring the jury to find a verdict for the defendant, plaintiff then and there duly excepted.*

"Whereupon the Court entered judgment for the defendant, and to which judgment the plaintiff then and there duly excepted" (Record, p. 76).

The plaintiff obtained a writ of error to the United States Circuit Court of Appeals for the Eighth Circuit and duly perfected the said appeal (Record, pp. 158, 164, 165).

THE ASSIGNMENT OF ERRORS which were filed by the plaintiff on that writ of error appear at length in the Record, and cover all of the plaintiff's exceptions taken on the trial (pp. 158-162).

MOTION TO AMEND BILL OF EXCEPTIONS SO AS TO HAVE IT EXPRESSLY STATE THAT IT CONTAINS ALL THE EVIDENCE.—Afterwards and before the hearing of the case in the United States Circuit Court of Appeals the plaintiff filed notice of motion to amend the bill of exceptions so as to have it expressly state that it contained all the evidence (Record, pp. 168, 169). In support of such motion the plaintiff filed affidavits, among others, affidavit of the stenographer who took the evidence introduced on the trial, to the effect that the bill of exceptions contained all such evidence (Record, p. 171). This motion was denied by the United States Circuit Court of Appeals (Record, p. 173), on the ground that any order which might be made by that court would not confer any authority upon the Circuit Court in addition to that which the Circuit Court now has to amend the bill of exceptions. The court also seemed to intimate, although we understand that it did not expressly decide, that the trial court had lost the power to amend the bill of exceptions by the lapse of the term at which the final judgment was entered.

THE BILL OF EXCEPTIONS ON ITS FACE SHOWS THAT IT CONTAINS ALL THE EVIDENCE.—We shall show later on in

the argument of this case that the bill of exceptions does as a matter of fact show on its face that it contains all the evidence.

The United States Circuit Court of Appeals heard the case on the writ of error, and by unanimous decision reversed the decision of the Circuit Court, and remanded the cause for a new trial (Record, p. 186). The opinion of the United States Circuit Court of Appeals appears in the Record (pp. 177–186).

PETITION BY DEFENDANT TO THE UNITED STATES SUPREME COURT FOR CERTIORARI TO BRING THE SAID CASE TO THIS COURT.—Afterwards the defendant the Board of County Commissioners of Gunnison County filed in this court a petition for a writ of *certiorari* to bring to this court for review the decision of the United States Circuit Court of Appeals, which writ was granted, and the record has been accordingly returned (Record, pp. 188–190).

ARGUMENT.

I.

Before proceeding to the examination of the questions arising on the record in which we shall show that the plaintiffs are clearly entitled to recover judgment on the obligations of the defendant county now here in question, we may here state briefly that *moral* justice and equity and fair dealing equally entitle the plaintiff to such recovery.

The defendant Gunnison county incurred certain indebtedness for legitimate county

purposes, and issued its warrants for such indebtedness.

See the list of certain warrants indicating the purposes for which they were issued (Record, pp. 109–115); also, see the purposes for which the indebtedness was incurred, as shown by the so-called financial statements (Record, pp. 108–120). All of this indebtedness was thus incurred for strictly county purposes. It was in good faith incurred by a rapidly growing county for the discharge of its public duties imposed upon it by law, and the county and the people of the county got the benefit of every dollar of it. No fraud or failure of consideration was attempted to be proved.

Vote of the people of the county. Not only did the county thus obtain the full benefit of every dollar of the indebtedness thus incurred for strictly county purposes, but the question was submitted to a vote of the people of the county whether or not the indebtedness thus incurred should be funded by the issue of the very bonds now here in question, and the people, at an election held on Tuesday, November 7, 1882, by a vote of 277 votes "for funding county debt" and 10 votes "against funding county debt," voted in favor of funding said debt (Record, p. 132). The question put to the qualified electors was distinctly (Record, p. 130), "Whether the board of county commissioners of said county shall issue bonds of said county under the provisions of the said act of the general assembly in exchange, at par, for the warrants of said county," &c. Afterwards, pursuant to, and expressly authorized by, such vote of the people, the county commissioners issued the funding bonds now in question.

If the county ever intended to question or repudiate, or attempted to question or repudiate, this indebtedness, that would have been the time for it to do so; but, instead of doing so, the people of the county, by their vote, with practical unanimity, agreed that this indebtedness should be paid, and that funding bonds should be issued therefor.

We may here pause to quote from the language of the late Chief-Justice of this court in the somewhat similar case of *Jasper County vs. Ballou*, 103 U. S., 745—language which is especially pertinent to the facts just stated. Mr. Chief-Justice WAITE, giving the unanimous opinion of this court, there said (p. 751):

"When, therefore, the people were called on to vote whether the old bonds should be funded, the facts they had to consider were these: A valid law authorizing the subscription and an issue of the bonds had been passed. The people, at an election which had been irregularly called, had voted to make the subscription and issue bonds bearing ten per cent. interest, and all payable within six years. An act had been passed to legalize the election, and under it the subscription which had been voted was made, and bonds such as were contemplated had been issued and were then outstanding in the hands of various parties. Whether these bonds were valid was, so far as any direct decisions were concerned, an open question, and certainly not free from doubt. Under these circumstances the question was directly put to the people of the county, in a manner authorized by law, whether they would recognize these bonds as 'binding and subsisting legal obligations,' and issue in lieu of them other bonds having twenty years to run and bearing seven per cent. interest instead of ten; and they, by their vote, said they would. There is no complaint of any illegality in this election, or of fraud or imposition. So far as the record shows, the proposition to fund went from the county authorities to the bondholders, and not from the bondholders to the county. The facts were as well known to one party as the other. If the people intended to rely on their defenses to the old bonds, then

was their time for them to speak and by their vote say they would not recognize them as binding obligations. By voting the other way, they, in effect, accepted them as legal and subsisting for the purposes of the proposed extension of time at reduced interest, and said to the holders, if their proposition was accepted, no question of illegality would be raised. Their offer having been accepted, they are now estopped from insisting upon an irregularity which they have by their votes voluntarily waived, with a full knowledge of the facts. The case is clearly, as we think, within the principle acted on by the Supreme Court of the State in *President and Trustees of the Town of Keithsburg vs. Frick, 34 Ill., 405.* **As was very properly said below by the learned circuit judge, 'there must be an end of these contests and defenses some time or other.' There must be a time when the people in their political capacity are concluded by their contracts as much as individuals, and we think that where the people of a county, at an election held accaccording to law, authorize their corporate or political representatives to treat certain outstanding county obligations as 'properly authorized by law' for the purpose of negotiating a settlement with the holders, and the settlement which was contemplated has been made, all contests as to the validity of the obligations must be considered as ended.**

"This disposes of all questions as to the excessive issue of bonds. For all the purposes of this case the original bonds must be taken as binding. The issue of the funding bonds did not increase the aggregate of the indebtedness of the corporation, but only changed its form."

So, also, the language of this Court in the case of *Graves vs. Saline County,* 161 U. S., 359, is likewise especially pertinent. Mr. Justice SHIRAS, giving the unanimous opinion of this Court, there says with regard to certain refunding bonds of Saline County (in that case refunding void bonds) (p. 374):

"But when, in pursuance of the funding laws, the question whether the outstanding original bonds issued to the Belleville and Eldorado Railroad Company should be refunded in new bonds was submitted to the same constituent body that authorized the original issue, and when, in accordance with the vote so taken, and in formal compliance with the other directions of the funding laws, negotiable securities were issued and delivered in payment of the outstanding bonds, we know of no principle of law which forbids the county of Saline from such honorable discharge of its liabilities in the hands of innocent holders. Such action on the part of the legal voters of Saline County may well be regarded as a declaration that there had been, by the actual construction of the railroad and the delivery of the stock, a substantial compliance with the original conditions. After such deliberate action, it is now too late for Saline County to seek the aid of a court of equity to enable it to avoid its contracts made in pursuance of a legislative grant of power, and the consideration of which has been received."

The history of the particular bonds now here in question shows also the justice of the plaintiff's claim for judgment. It was proved that Joseph Standley obtained $5,000 of the bonds, the interest on which is now sued for in this action, by exchanging therefor warrants of the defendant County of Gunnison issued for strictly county purposes and for full value as above stated (Record, pp. 36, 37); and that the said Joseph Standley purchased the other $5,000 of bonds from Rollins & Young, municipal bond dealers, paying therefor 98 cents on the dollar. Standley testifies (Record, p. 36): "I had some warrants, and when the county funded I turned in my warrants for bonds 9 to 13." He also testifies (Record, p. 36) that he had no knowledge of the amount of bonds that were being issued by Gunnison County in funding, and had no notice or knowledge that there was anything irregular or illegal about the issuance of the bonds (Rec., p. 36).

The case therefore stands as follows: Mr. Standley having certain warrants goes, on the County's invitation, to the county commissioners and says: "I hear you are proposing to issue funding bonds in exchange for warrants." The county commissioners say: "Yes; we have been authorized to do so by the act of the legislature and by the practically unanimous vote of the people of the county; here are the bonds." And the county commissioners execute and deliver to Standley in exchange for his warrants which the County still holds the solemn obligations of the county, issued under its seal, signed by its duly elected and duly accredited officers representing the county. This bond acknowledges its indebtedness to the bearer and promises to pay. The bond further contains this express and definite recital (Record, p. 2):

"This bond is issued by the Board of County Commissioners of said Gunnison county in exchange, at par, for valid floating indebtedness of the said county outstanding prior to September 2, 1882, under and by virtue of and in full conformity with the provisions of an Act of the General Assembly of the State of Colorado, entitled 'An Act to enable the several counties of the State to fund their floating indebtedness,' approved February 21, 1881; and it is hereby certified that all the requirements of law have been fully complied with by the proper officers in the issuing of this bond. It is further certified that the total amount of this issue does not exceed the limit prescribed by the constitution of the State of Colorado, and that this issue of bonds has been authorized by a vote of a majority of the duly-qualified electors of the said county of Gunnison, voting on the question at a general election duly held in said county on the seventh day of November, A. D. 1882."

The County not only holds the warrants which Standley surrendered, but its counsel on the trial

claimed to produce, among others, these warrants for the purpose of defeating a recovery on the bonds!

Mr. Standley afterwards purchased $5,000 of similar bonds.

On these facts and on this record the officers of the county attempt to repudiate these bonds, and now ask this court to sanction such attempted repudiation, and to affix to a judgment in favor of the county the *imprimatur* of its approval. Is this honesty or justice or fair dealing? There can be but one answer to the question. Will this court lend its sanction to such conduct on the part of the county? Clearly it will not do so unless it is constrained by inexorable principles of law. Moreover, such repudiation is against the purpose and spirit of the Constitutional Amendment of 1888 (see Appendix hereto). We proceed now to a consideration of the several legal questions involved in this case, and to show that the strict legal right of the matter is in this case as in most others on the same side of the controversy on which stand moral justice and equity.

II.

Objections by Counsel for County that the record presented no question for review by Circuit Court of Appeals, examined and shown to have no foundation.

It is objected by Counsel for the County that the bill of exceptions does not contain all the evidence;

and then, that because of such supposed fact there was no question presented for review.

We submit in the first place that the bill of exceptions does show that it contains all the evidence.

(a) The record shows that the bill of exceptions contains all of the evidence which was given on the trial of the case. This fact need not be shown in any particular or technical form. It is enough if it appears to the satisfaction of the court from an inspection of the bill of exceptions, and from the statements therein made.

If we examine this bill of exceptions we shall see that the cause came on for trial Tuesday, May 19, 1896 (Record, pp. 31, 32). It also appears (Record, p. 33) that "the complainants, to sustain the issues on their part, offered *the following* oral and documentary evidence." Then follows without any break the evidence offered on behalf of the complainants down to page 45 of the record; and then appears the entry, "*Whereupon* complainants rested;" and then the entry, "*Thereupon* the defendants, to sustain the issues herein joined on their part, produced *the following* evidence." Note the language in both instances: "*The following* evidence;" not "the following, *among other evidence*," but "*the following* evidence." Then follows without any break the evidence given on behalf of the defendant until the entry (Record, p. 66), "*Whereupon* the further proceedings herein were continued until the 20th day of May, A. D. 1896, at ten o'clock A. M." Then immediately following is the entry (Record, p. 67), "Wednesday, May 20, at ten A. M., the further trial of this cause was continued as

follows." Then appear some discussions and motion of counsel, and then the entry (Record, p. 67), "*Thereupon*, counsel for defendant made a formal motion under the evidence as offered on both sides, that the court instruct the jury to return a verdict for the defendant, whereupon the court instructed the jury as follows."

It thus appears from an inspection of the bill of exceptions itself, and of the statements therein contained, that such bill of exceptions contains all of the evidence offered on the trial of this case. By the introductory and connecting words, by the character of the testimony as reported, and by the expressive words "whereupon" and "thereupon" no reader can doubt that the bill of exceptions does, in fact, contain all of the evidence.

In *Spangler vs. Green*, 21 Colo., 505, 511, the court says:

"It is true that the bill of exceptions does not contain an express statement that all the evidence introduced at the trial has been certified up, but at the close of the evidence offered in behalf of the Chicago Lumber Co. the statement is that 'thereupon said Chicago Lumber Co. rested its testimony' and at the close of Ackroyd & Co.'s case it is 'Ackroyd & Co. here rested their testimony,' and at the close of appellant's case the statement is 'defendant, Jane Spangler, here closed her testimony.' These expressions are equivalent to that usually found in a bill of exceptions to the effect that all the testimony taken was preserved" *(Iron Wood Store Co. vs. Harrison*, 75 Mich., 197; *Hitchcock vs. Burgett*, 38 Mich., 501*)*.

It was shown, beyond dispute, that the bill of exceptions did, in fact, contain all the evidence (Rec., pp. 168–171).

In the proceedings to amend the bill of exceptions the counsel for the County did not controvert the

proposition that the bill of exceptions did, in point of fact, contain all the evidence.

But even if it should be held that the bill of exceptions does not show that it contains all the evidence, the case was clearly reviewable by the Circuit Court of Appeals.

(b) The instructions to the jury duly excepted to were reviewable by the Circuit Court of Appeals, and are open to consideration in this court.

See these exceptions, Record, pp. 72–76, and this brief, *supra*, pp. 9–15.

We find that it is objected by the counsel for the county, and also held by the United States Circuit Court of Appeals, that it could not review any of the exceptions which were taken to the charge of the said court, because the trial Court expressed the logical result of its several erroneous statements of law in the form of a peremptory direction to the jury to return a verdict for the defendant (Record, p. 181). We respectfully submit that this is not the law. The higher court may review such portions of the charge of the lower court to the jury as incorrectly state the law, and as are duly objected and excepted to at the time. This is always the rule. Especially may this be done where the trial court concludes by directing the jury to find a verdict against the party who makes such objections and exceptions. This precise point was determined in the case of *Anderson vs. Bock*, 15 How., 323 (where the bill of exceptions did not contain all the evidence), where plaintiff requested certain instructions, which were refused and the ruling excepted to, and the court

then gave a peremptory instruction to the jury to find for the defendant.

It is, to say the least, a novel proposition that, after the court has charged the jury erroneously, and the plaintiff has objected and pointed out specific objections to the charge, and duly excepted thereto, then the court can cure those specific objections by concluding with a peremptory direction (the mere concrete result of such erroneous views) to return a verdict against the party who makes the objection and exception. We say, on the contrary, that this furnishes all the more reason for reviewing and reversing the judgment and granting a new trial, because it is thus made perfectly manifest that the trial court thereby committed error, and that such error directly brought about the erroneous and unjust result.

In order to review the charge of the court, or portions of the charge of the court, upon a matter of law, it is not necessary to insert in the record either (1) the entire evidence (*Anderson vs. Bock*, 15 How., 323, *supra*), or (2) the entire charge to the jury.

That the *entire evidence* need not be set out in the record in such case was early decided in this court in *Pennock vs. Dialogue*, 2 Pet., 1, where STORY, J., giving the opinion of the court, said (p. 15):

> "There was not the slightest necessity of putting any portion of the evidence in this case upon the record, since the opinion of the court delivered to the jury presented a general principle of law, and the application of the evidence to it was left to the jury."

That the *entire charge to the jury* need not be set out in the record in such case was likewise early decided in this court in *Stimpson vs. West Shore Railroad Company*, 3 How., 553, where TANEY, Ch. J., giving the

opinion of the court, refers to the rule of this court, which is the present rule No. 4, and which provides that "the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts."

As was well said by this court in the case of *Worthington vs. Mason*, 101 U. S., 149:

"The judge can not be permitted to cure the error of his law proposition by assuming as facts what may not have been proved. This very part of the charge was excepted to by the plaintiffs in error on the ground that its law was erroneous. * * * The proof of the facts which made the charge erroneous must be distinctly set forth, or it must appear that evidence was given tending to prove them."

Applying the principles there stated to the present case, there were facts in the record showing conclusively, as we say (or, at the very least, *tending* to show, which would entitle the plaintiff to go to a jury), that the plaintiff was a *bona fide* holder of the bonds in question, and on this state of facts the charge made by the judge to the jury in the particulars pointed out was clearly erroneous.

That a part of the charge which is erroneous may be reviewed without reference to the remaining parts of the charge has always been held by this court; for example, in *United States vs. Rindskopf*, 105 U. S., 418, where Mr. Justice FIELD says (p. 421):

"The bill of exceptions in this case sets forth the charge of the court below in full in disregard of our frequent condemnation of this practice. Only the parts to which the exceptions relate should have been given. All else is unnecessary and produces only inconvenience."

If this be sound, then it must follow that it is immaterial what the remainder of the charge to the

jury may have been, unless the remaining charge to the jury be inserted and it be shown that the court in the remainder of its charge cured the error complained of. Instead of any such thing being shown in the present case, the court went on to make its error worse by giving a peremptory instruction to the jury to find a verdict for the defendant.

A very pertinent case also is *Ward vs. Cochran*, 150 U. S., 597, where this court, Mr. Justice SHIRAS giving the opinion, says (p. 608):

"In the present case, even if the verdict were regarded as a general one, and therefore entitled to be supported by the presumption that sufficient facts existed to sustain it, yet we should feel constrained to reverse the judgment because of the errors complained of in the eighth, ninth and tenth assignments."

All of the eight, ninth and tenth assignments referred to related to instructions to the jury. The court after considering these erroneous instructions said (p. 610):

"Nor do we think this is one of those cases in which erroneous or insufficient instructions in one part of a charge are corrected or supplied by unobjectionable instructions on the same questions appearing in another part."

(c) There were errors in the admission of the evidence; and the rulings of the court which were duly objected and excepted to at the time were reviewable by the Circuit Court of Appeals.

See these exceptions stated in detail in this brief, *supra*, pp. 3-8.

When evidence is erroneously offered and received, it is presumed, in the absence of any contrary showing

in the record, that this error affected the result, and a judgment must be reversed. We understand that the counsel for the county urges the argument that every presumption is in favor of the verdict and judgment. This presumption, however, does not exist as against an error in the admission or rejection of evidence, and whenever evidence is erroneously admitted or rejected and the objection to the same is duly pointed out at the time and exception duly taken, the presumption in favor of the correctness of the verdict and judgment ceases to exist. The burden then lies on the party who says that no injury was produced by the erroneous ruling as to the admission or rejection of evidence to show from the record that such error did not and could not affect the result.

It is not necessary for the plaintiff in error in such case any more than in any other to cause to be inserted the whole of the evidence which was given on the trial.

The rule on this subject is well stated in the case of *Vicksburg and Meridian Railroad Company vs. O'Brien*, 119 U. S. 99, where Mr. Justice HARLAN, giving the opinion of the court, said (p. 103):

"While this court will not disturb a judgment for an error that did not operate to the substantial injury of party against whom it was committed, it is well settled that *a reversal will be directed unless it appears beyond doubt that the error complained of did not and could not have prejudiced the rights of the party.*" (Cases cited.)

In the case of *Mexia vs. Oliver*, 148 U. S., 664, the record contained a bill of exceptions, which seems not to have brought up all the evidence. The bill of exceptions showed the fact that certain evidence was admitted over the objection and exception of the plaintiff,

and this Court reversed the judgment for that reason, saying (p. 673):

"We cannot say that these errors were immaterial, as *it does not appear beyond doubt that they were errors which could not prejudice the rights of the plaintiffs*" (Cases cited).

That rulings on the admission of evidence during the progress of the trial are reviewable although the court itself decides the case, see *Norris vs. Jackson*, 9 Wall., 125, where the court says the same rule applies in this respect in actions at law whether they be tried by the court without a jury or by the court with a jury and a general verdict be rendered.

In the case of *Lincoln vs. Claflin*, 7 Wall., 132, Mr. Justice FIELD, giving the opinion of this court, says (p. 136):

"A bill of exceptions should only present the rulings of the court upon some matter of law—as upon the admission or exclusion of evidence—and *should contain only so much of the testimony*, or such a statement off the proofs made or offered, *as may be necessary to explain the bearing of the rulings upon the issues involved.* If the facts upon which the rulings were made are admitted, the bill should state them briefly as the result of the testimony. If the facts are disputed, it will be sufficient if the bill allege that testimony was produced tending to prove them."

See, also, to the same effect, per BREWER, J., *Lees vs. United States*, 150 U. S., 476, 482; and the case *Hickman vs. Jones*, 9 Wall., 197, 199.

In the case of *Michigan Insurance Bank vs. Eldred*, 143 U. S., 293, the trial court gave a *peremptory instruction* to find in favor of the defendant. The case was reversed by this court *on exceptions to the admission of evidence.* Mr. Justice GRAY, giving the opinion of the court, says (p. 300):

"The admission of this evidence was objected to by the plaintiff, upon the very ground that it did not prove the non-existence of the plaintiff as a corporation; and an exception to its admission was duly taken and noted, and embodied in the bill of exceptions.

"The plaintiff afterwards renewed the objection, by moving 'that all of the defendant's evidence by stricken out, for the reason, if it be assumed to be correct, it has not made out any case.' The reason assigned by the judge for refusing to grant this motion was his erroneous opinion that on the proof as it stood 'the Michigan Insurance Bank became defunct and ceased to exist in 1865, when the national bank was organized;' and the plaintiff again expected in due form.

"Although the subsequent proceedings had at the trial, and stated in the original bill of exceptions, do not appear on this record to have been excepted to, yet those proceedings may properly be considered for the purpose of showing, as they do beyond doubt, that the judge's rulings in favor of the defendant proceeded solely upon the incompetent evidence to the admission and consideration of which the plaintiff had persistently excepted."

Clearly, the court in examining on writ of error as to the admissibility of evidence has a right to examine, in connection with the evidence objected to, whatever evidence appears in the bill of exceptions, in order to see its bearing on the admissibility of the evidence offered, and this is true whether the bill of exceptions contains *all* of the evidence, or whether it contains only a *part* of the evidence. And if it appears to the satisfaction of the higher court from the evidence which is contained in the bill of exceptions that the trial court committed error, then the higher court will not presume that there is other evidence which does not appear in the bill of exceptions which would counteract and overcome the evidence which is contained therein. On the contrary, the rule is, as stated in the above authorities, that the judgment will be

reversed unless it appear "*beyond doubt*" that the error in admitting or rejecting evidence did not and could not produce injury to the party excepting.

III.

Plaintiff was a bona fide holder of the coupons in question, and must be so considered in passing upon the exceptions to the rulings upon admission of evidence, and to the instructions to the jury.

(1) It is presumed that plaintiff (the bonds being negotiable) is a bona fide holder, that is, a purchaser for value without notice, in the absence of any showing to the contrary.

In *San Antonio vs. Mehaffy*, 96 U. S., 312, this court, Mr. Justice SWAYNE delivering the opinion, said (p. 314):

"The holder of commercial paper, in the absence of proof to the contrary, is presumed to have taken it underdue for a valuable consideration and without notice of any objection to which it was liable (2 Pars. Bills and Notes, 9; *Pinkerton vs. Bailey*, 8 Wend., N. Y., 600).

"There is certainly nothing in the record which shows that such is not the position of the defendant in error.

"This shuts the door, as matter of law, to all inquiry touching the regularity of the proceedings of the officers charged with the duty of subscribing and making payment in the way prescribed. The rule in such cases is that, if the municipality could have had the power under any circumstances to issue the securities, the *bona fide* holder has a right to presume they were issued under the circumstances which give the

authority, and they are no more liable to be impeached in his hands for any infirmity than any other commercial paper *(Supervisors vs. Schenck*, 5 Wall., 772; *San Antonio vs. Lane*, 32 Tex., 405*)*."

Lexington vs. Butler, 14 Wall., 282.
Macon County vs. Shores, 97 U. S., 272.
Montclair vs. Ramsdell, 107 U. S., 147.

(2) It was pleaded and proved that plaintiff was a bona fide holder, that is, paid value and had no notice of any alleged illegality.

See Complaint, Record, p. 6; Testimony, Record, pp. 36, 37, 98, 99; also this brief, *supra*, pp. 2–3.

This evidence was not disputed, and no evidence was offered to contradict it; but, if there had been any, then plaintiff was, at least, entitled to go to the jury on the question of weight of evidence.

A *bona fide* holder is a purchaser for value without notice, or the successor of one who was such purchaser.

McClure vs. Oxford Twp., 94 U. S., 429.

If any previous holder of the bonds in suit was a *bona fide* holder for value, the plaintiff can avail himself of such previous holder's position without showing that he has himself paid value.

Montclair vs. Ramsdell, 107 U. S., 147.

Though he may have notice of infirmities in its origin, a purchaser of a municipal bond from a *bona fide* holder before maturity takes it as free from such infirmities as it was in the hands of such holder.

Cromwell vs. Sac County, 96 U. S., 51.
Douglas County vs. Bolles, 94 U. S. 104.
Marion County vs. Clark, 94 U. S., 278.
San Antonio vs. Mehaffy, 96 U. S., 312.
City of Nauvoo vs. Ritter, 97 U. S., 389.

(3) The burden of establishing the fact that the plaintiff had any actual notice was upon the county; and, if it claimed that this fact was established "beyond doubt" upon the trial, it should have caused such parts of any evidence as it claims established that fact "beyond doubt" to be inserted in the bill of exceptions, to show that the erroneous admission of the evidence which plaintiff complains of produced no injury.

See, on this point, the cases in this brief, *supra*, pp. 29–31.

(4) The whole bill of exceptions assumes, and the trial court in its charge assumes, that the plaintiff had no actual notice, and that the only notice which was claimed either by the counsel for the county or by the trial court was constructive notice.

The remarks of this Court, in *Shepherd vs. Baltimore and Ohio Railroad Company*, 130 U. S., 426, are appropriate here. The fact in that case was that the trial court had given a peremptory direction to find a verdict for the defendant. It was also the fact that, during the progress of the trial, the plaintiff had offered certain evidence which the court had improperly excluded. It was objected by the defendant in error that the plaintiff would have no right to recover in any event, because there was no proof in the record as to his ownership of the property in question, which ownership had been denied by the defendant in its answer. This court, Mr. Justice HARLAN giving the opinion, says (p. 434):

"This objection is too technical and cannot be sustained, as the property is repeatedly referred to in the record as being owned by the plaintiff, and the court so assumed in its rulings."

So we say in the present case, that the trial court im-

properly admitted evidence which was not good as against the plaintiff as the *bona fide* holder of these coupons; and, for the reasons above stated, the counsel for the county is mistaken in asserting that it does not appear that the plaintiff was such a *bona fide* holder.

Plaintiff had no notice from bond numbers of any excessive issue of bonds.

The defendant undertook to make the point that the bonds are numbered and divided into series A, B and C, and from this fact to impute some notice to plaintiff. Precisely the same thing was true in the case of *Chaffee County vs. Potter*, 142 U. S., 355, as an inspection of the bond set forth in the report of that case will show. The courts have, however, frequently decided that the numbers on municipal bonds are not a material part of the bonds, and that they may even be altered or erased without affecting the validity of the bonds in the hands of *bona fide* holder.

Birdsall vs. Russell, 29 N. Y., 220;
Commonwealth vs. Emigrants' Industrial Savings Bank, 98 Mass., 12;
City of Elizabeth vs. Force, 29 N. J. Eq., 587.

But, in any event the numbers on the bonds in question in the present case did not on any theory give the holder any notice of any excessive issue of bonds.

The numbers of the bonds the coupons of which are in question in the present case are 9 to 13, 63 to 66 and 98. The indebtedness of Gunnison County on the assessed valuation for the year 1892, might have been $140,448.30, which is six mills on the dollar of the assessed valuation of $2,343,955. Therefore, even if

the plaintiff were bound to take notice that all of the $98,000 of bonds were outstanding, and even if in addition some of the series B and C were outstanding, the total amount might still be within the debt limit. Therefore, the plaintiff did not on any theory have any notice from the face of the bond that the total amount of the issue exceeded the debt limit prescribed by the constitution of the State of Colorado.

The learned counsel for the county seems to have attempted to make the argument that the holder of the coupons is not entitled to the benefit of any recital in the bonds. We hardly think the learned counsel can be serious in advancing this proposition. It is enough to say in regard to it that it is refuted by scores of decisions in this court, in many of which the court has expressly decided that the holder of the coupons must take notice of what is contained in the bonds, and is entitled to the benefit of any recitals in the bonds.

In connection with this the learned counsel for the county seeks to make the point that the coupons now in question do not refer specifically and at length to the bonds. It is a sufficient answer to this proposition to say that the coupons in question in the case of *Chaffee County vs. Potter*, 142 U. S., 355, were precisely like the coupons now in question.

The plaintiff Standley was a bona fide holder of the $5,000 of bonds received by him in exchange for warrants which he surrendered to Gunnison County.

He paid value for the said bonds, namely, he surrendered his warrants, and he had no notice of any irregularity or fraud or any illegality in the issue of

the bonds. That the person who first takes bonds from a municipal corporation under such circumstances, as well as any subsequent taker, may be a *bona fide* purchaser for value is well settled by the decisions of this court in *Commissioners vs. Bolles*, 94 U. S., 104, and *Montclair vs. Ramsdell*, 107 U. S., 147. In this latter case this court said, Mr. Justice HARLAN giving the opinion (p. 160):

"This question was directly adjudged in *Commissioners vs. Bolles*, 94 U. S., 104. One of the issues there was whether the plaintiff was a *bona fide* holder of certain municipal bonds. After stating that the legal presumption was that they were, the court, speaking by Mr. Justice STRONG, said: 'But the plaintiffs are not forced to rest upon mere presumption to support their claim to be considered as having the rights of purchasers without notice of any defense. They can call to their aid the fact that their predecessors in ownership were such purchasers. To the rights of those predecessors they have succeeded. **Certainly the railroad company paid for the bonds and coupons by paying an equal amount of their stock, which the county now holds; and nothing in the special facts found shows that the company knew of any irregularity or fraud in their issue.' The court proceeded: 'And still more, the contractor for building the railroad received the bonds from the county in payment for his work, either in whole or in part, after his work had been completed. There is no pretense that he had notice of anything that should have made him doubt their validity. Why was he not a bona fide purchaser for value? The law is undoubted, that every person succeeding him in the ownership of the bonds is entitled to stand upon his rights.'**"

The Circuit Court held that even if the plaintiff was a *bona fide* holder for value, without actual notice of any defense, he could not recover, and directed a

verdict for the County (Rec., p. 72). And this is the capital error in the case as it is the purpose of this argument to show.

IV.

The recital in the bonds in question, "that the total amount of this issue does not exceed the limit prescribed by the constitution of the State of Colorado," is conclusive as an estoppel in favor of the plaintiff as a bona fide holder of the coupons in question.

We might here cite the decision of this court in the case of *Chaffee County vs. Potter*, 142 U. S., 355, a case which was decided under this very clause of the constitution of Colorado, and with precisely the same recital in the bond, and make no more argument under this proposition. Inasmuch, however, as the counsel for the county has undertaken to question the correctness of this proposition and of the said decision of this court, we proceed to consider the matter somewhat at length.

County Officers Have Power to Make Recitals.

The main proposition advanced by the counsel for the county seems to be that under the constitution of Colorado the county officers have no power under any possible circumstances to make any recital in the

bonds as to the constitutional debt limit which will in any way bind the county. On this proposition is based all their argument to avoid the effect of the above quoted specific and positive recital in the bonds.

We may, in the first place, call the attention of the court to the inconsistency of the arguments of the counsel for the county. They say in one breath that the county officers have no power to make recitals as to the constitutional debt limit because under the constitution they have no power to determine what is indebtedness of the county; but in the next breath they say that the county officers made certain "financial statements" of the indebtedness of the county, and they offer these statements in evidence as showing the indebtedness of the county for the purpose of proving that the county was beyond the constitutional debt limit. Both their propositions can not possibly be true. If the county officers have no power to determine the indebtedness of the county as respects the constitutional debt limit, they have no power as respects the constitutional debt limit, to make any "financial statements" which shall include any statement of the indebtedness of the county. We are now dealing with the power to make any determination, not with the question whether the determination as made is correct or incorrect. That cannot affect the question of the power to make the determination. When, therefore, our opponents introduce in evidence these so-called financial statements to prove that the constitutional debt limit is exceeded, they themselves thereby admit and affirm that as respects the said constitutional debt limit the county officers have power to decide and determine what is the amount of the county debt. There can be no distinction as respects

the constitution whether such determination be set forth in the recital in the bond, or, whether such determination be set forth in a so-called financial statement filed in the county clerk's office. Our opponents thereby completely disprove their own proposition, which is that the county officers have no power to make recital in the bonds as to the constitutional debt limit, because they have no power to determine what are the debts of the county.

But the learned counsel for the county are clearly in error in advancing the proposition that the county officers have no power to make a determination as to the indebtedness, which determination shall bind the county. As we understand their argument, it is substantially this: That the constitution provides that the debt shall not exceed a certain percentage of the assessed valuation, and the counsel then say that the statutes, therefore, have no power to confer upon any officers of the county the power to determine what is indebtedness or what is the assessed valuation. In other words, inasmuch as this is a *constitutional* debt limit, the *statutes* cannot confer upon any body of men any power to make recitals as to whether or not the limit is exceeded. It is to be observed in regard to their argument that the logic of it would require that no executive, legislative or administrative officers, or any persons or tribunal, except a court, can determine either what is indebtedness of the county or what is its assessed valuation, and that the hands of the officers of the county are completely tied as respects the exercise of the usual functions of officers by this provision of the constitution. Their argument assumes that the officers of the county thus have their usual functions

taken away from them without any express provision to that effect in the constitution.

We submit that such argument will not bear examination. The debt limit provision of the constitution does not take away or attempt to take away from county officers their usual and proper functions. To listen to the argument of the learned counsel for the county, one would think that counties and county officers and all their functions were derived solely from legislative enactment, and that the legislature had, by some statute especially enacted for that purpose, attempted to confer upon county officers special and express power to recite away the provisions of the constitution, and that the learned counsel for the county were arguing against the constitutionality of such statute. The fact is, however, that counties and county officers are recognized and provided for in the constitution itself, and the constitution contemplates that they shall perform the usual and proper functions of county officers, and represent the county in the county's affairs. The constitution of Colorado has an entire article on Counties—Article XIV. It provides, among other things:

SECTION 6. "In each county there shall be elected for the term of three years three county commissioners, who shall hold sessions for the transaction of county business as provided by law."

SECTION 8. "There shall be elected in each county * * * one county clerk, who shall be *ex officio* recorder of deeds and clerk of the board of county commissioners, one sheriff, one coroner, one treasurer," &c.

SECTION 12. "The general assembly shall provide for the election or appointment of such other county, township, precinct and municipal officers as public convenience may require."

The fact is, therefore, that the *Constitution* of Colorado constitutes the county commissioners, county clerk, county treasurer and other officers the officers of the county to act for and on its behalf in the matter of county affairs. They are not constituted by statute, as the argument of the learned counsel for the county would seem to imply, but by the constitution itsef.

Note that these provisions as to counties and county officers were inserted in the constitution *at the very same time* as the provisions in regard to the debt limitation of counties. It seems perfectly clear that the constitution contemplated that the county officers should act for and represent the county in regard to the incurring of county indebtedness, as well as in regard to all other county affairs. Certainly no exception is made in the constitution to prevent their so doing. The rule of construction is that all of the provisions of the constitution must be construed together, and, as the constitution clearly contemplates that the county officers are to act *generally* for the counties, there is no exception that they shall not act for and represent the counties in respect of incurring county debt unless such exception be expressly stated in the constitution.

The constitution, therefore, contemplates that these officers shall act for the county, and that they shall make contracts for the county. Can there be any doubt that, if the legislature should authorize county officers to make a contract for the building of a court house or jail, or for any other proper county purpose, these officers would not have the power to bind the county by such a contract, by its provisions and its recitals, and thus to estop the county? Certainly not. So, also, in the case of a claim against the county the county offi-

cers would clearly have power, so far as the constitution is concerned, to act for the county in adjusting a claim and making payment of it. Their acts and contracts in this respect would bind and estop the county. Precisely the same principles apply as to all other matters of the county committed to the county officers. In other words, the county officers represent the county. The constitution in substance and effect so provides. The whole scheme of government so provides. There is no other administrative or executive body to represent the county, or to speak for the county in county matters. The argument of the learned counsel for the county necessarily goes to the length of holding that there is no body of men authorized to speak for the county so as to bind the county in the matter of incurring county debt. If the constitution had intended any such thing, then it would have been very easy so expressly to provide. In the absence of any such provision, it must necessarily be assumed that county officers are to represent the county as respects the incurring of debt as well as in respect to all other matters.

But the learned counsel for the county say that the view which we have here stated is open to the objection that the county officers may abuse their powers. So they may. They may steal the money of the county; they may waste the money; they may make improper contracts and abuse their powers in many ways. So may any officers of the State, or the officers of any political subdivision of the State. But was it ever before heard that because such abuse may sometimes occur, therefore the officers in abusing their powers do not represent the county? When it comes to the question whether the county shall suffer for the

unlawful acts of its officers elected by the people of the county and representing the people of the county, or whether the innocent persons who have dealt in good faith with the county as represented by its accredited officers, there can be but one answer—the county should suffer if any one must. This is right and just both morally and legally, for the people of the county elect their own officers, and have it in their power to choose officers on whom they are willing to rely, and presumably they do so. Having chosen their own officers and agents, and having held them out to the public as their duly accredited officers and agents, the people of the county and the county alike by every principle of law and morality are bound and estopped by the acts and representations of such officers and agents as against innocent third persons with whom they have dealt in county matters. The county and the people of the county hold out their officers as representing the county, and cannot be heard to assert the contrary. In the view here stated the remedy of the county, if the officers abuse their trust, is clear—namely, to take more interest in public affairs, to examine into the character and fitness of their candidates, and to elect better men. If they elect bad men knowingly, or without investigation, they have only themselves to blame, and they only suffer for their own folly. The fact is that in our system of popular government the tendency of the people to neglect all public affairs, and to neglect to inquire into the character and fitness of their candidates for office, and supinely to rely upon some provision in the constitution to overcome all that their officers thus elected may do on their behalf, needs the wholesome check now and then of the people suffering,

if need be, some loss because of the dishonesty or incapacity of officers thus carelessly elected.

But in view of our opponents, what is the remedy? They say, let the innocent third person suffer for the acts of the county officers rather than let the people of the county, who elected the officers, and who thus hold them out as the county's representatives.

But be it noted that the people of the defendant county specfically voted at a public election, provided for by law, for the issue of these very bonds.

Chaffee County case settles the power to make the recital contained in the bonds in suit.

But, as already stated, we do not need to argue on principle the proposition that the recital in the bonds in question, "that the total amount of this issue does not exceed the limit prescribed by the constitution of the State of Colorado," is conclusive as an estoppel in favor of the *bona fide* holder of the bonds in question.

This precise proposition has been decided by this court in *Chaffee County vs. Potter*, 142 U. S., 355, and has never been departed from in any case in this court. In fact, **the recital in the bond in Chaffee County vs. Potter was word for word exactly like the recital in the bond in the present case**—to wit: "*It is further certified that the total amount of this issue does not exceed the limit prescribed by the constitution of the State of Colorado*" (p. 357; Record in the present case, p. 2).

The court distinguished the case of *Lake County vs. Graham*, 130 U. S., 674, and *Dixon County vs. Field*, 111 U. S., 83, saying (p. 362):

"We held in that case [*Lake County vs. Graham*] that the county was not estopped from pleading the constitutional limitation, because there was no recital in the bonds in regard to it, and because, also, the bonds showing upon their face that they were issued to the amount of $500,000, the purchaser, having that data before him, was bound to ascertain from the records the total assessed valuation of the taxable property of the county, and determine for himself, by a simple arithmetical calculation, whether the issue was in harmony with the constitution; and that the bonds, having been issued in violation of that provision of the constitution, were not valid obligations of the county. Our decision was based largely upon the ruling of this court in *Dixon County vs. Field*, 111 U. S., 83. To the views expressed in that case we still adhere; and the only question for us now to consider, therefore, is: *Do the additional recital in these bonds, above set out, and the absence from their face of anything showing the total number issued of each series, and the total amount in all, estop the county from pleading the constitutional limitation?*

"In our opinion these two features are of vital importance in distinguishing this case from *Lake County vs. Graham* and *Dixon County vs. Field*, and are sufficient to operate as an estoppel against the county."

The recitals in these bonds in the case now under consideration cannot be disputed upon any such evidence as was presented in this case.

In *Buchanan vs. Litchfield*, 102 U. S., 278, the Court said (p. 292):

"Had the statute restricted the exercise of the authority therein conferred to those municipal corporations whose *indebtedness did not*, at the time, *exceed the constitutional limit*, there would have been ground for holding that the city could not, as against the plaintiff, dispute the *fair inference to be drawn* from such recital or statement *as to the extent of its existing indebtedness*."

In *School District vs. Stone*, 106 U. S., 183, the Court said (p. 185):

"Had the bonds recited that they were issued by authority of the election of July 31, 1869, and in *conformity with the provisions of* the statute referred to, there would, in view of the decisions of this Court, be more force in the argument in behalf of the defendant in error. * * * And we should, then, be obliged to decide whether, in view of the constitutional provision, a false recital by the School Board as to the value of the taxable property would conclude the district as between it and a *bona fide* purchaser for value; for, in such case, since the statute itself contains, substantially, the same limitation upon indebtedness by independent school districts as is prescribed by the State Constitution for county or other political or municipal corporations, a distinct recital that the bonds where issued *in conformity with the statute would fairly import a compliance with the Constitution.*"

In *Sherman County vs. Simons*, 109 U. S., 735, the Court said (p. 737):

"The defendant in error is found by the Circuit Court to be a *bona fide* holder for value. According to repeated decisions of this Court, being such, he was not bound to go behind the *law and the recital* of the bonds *to inquire into the amount of the county indebtedness.*"

In *Dallas County vs. McKenzie*, 110 U. S., 686, the Court said:

"In *Marcy vs. Township of Oswego*, 92 U. S., 637, and *Humboldt Township vs. Long, Ib.*, 642, followed in *Wilson vs. Salamanca*, 99 U. S., 499, it was expressly decided that municipal bonds were not invalid in the hands of a *bona fide* holder, *by reason of their having been voted and issued in excess of the statutory limit, if the recitals imported a valid issue.*"

In *Dixon County vs. Field*, 111 U. S., 83, the Court, while deciding that a purchaser had to take notice of the *assessed valuation* of a county, said (p. 95):

"The case is to be distinguished from *Marcy vs. Township of Oswego*, 92 U. S., 637, where, although it was provided that the amount of the bonds voted by any

township should not be above such a sum as would require a levy of more than one per cent. per annum on the taxable property of such township to pay the yearly interest, it was held that the existence of sufficient taxable property to warrant the amount of the subscription and issue, it not being designated as fixed by the assessment, was one of those prerequisite facts to the execution and issue of the bonds, which was of a nature that required examination and decision, and had been referred by the statute to the *inquiry and determination of the Board.* In *Sherman County vs. Simons*, 109 U. S., 735, the County Commissioners were constituted by the statute the tribunal for the purpose of determining the *amount of the indebtedness*, in excess of which the bonds were not to be issued, and their decision was accordingly held to be conclusive."

It must not be understood that the statutes, in the cases referred to above, *by express terms* delegated power to the Board to make these determinations. They did not do so any more definitely than in the case at bar. And that was sufficient. *Bernard's Township vs. Morrison*, 133 U. S., 523.

In *Buchanan vs. Litchfield*, 102 U. S., 278, arising under a Constitutional limitation of indebtedness in Illinois, the Court said (p. 289):

"But in what way was the purchaser to ascertain the extent of the city's indebtedness existing at the time the bonds in question were issued? The extent of that indebtedness was *a fact peculiarly within the knowledge* of the constituted authorities of the city. It was necessarily left, *both by the Constitution and the statute of 1873 to their examination and determination*, under the constitutional injunction, however, that no municipal corporation should exceed the prescribed amount of indebtedness. It was, nevertheless, *a fact which*, so far as we are advised by the record, could not at all times and absolutely, or with reasonable certainty, be ascertained from any official documents to which the public had access. A like difficulty, perhaps, would arise in the case of any municipal corporation possessing the general power of raising money, by taxation and otherwise, to carry on local government."

In *Chaffee County vs. Potter*, 142 U. S., 355, the Court said (p. 363):

"True, if a purchaser had seen the whole issue of each series of bonds and then compared it with the assessment roll, he might have been able to discover whether the issue exceeded the amount of indebtedness limited by the Constitution. But that is not the test to apply to a transaction of this nature. It is not supposed that any one person would purchase all the bonds at one time, as that is not the usual course of business of this kind. The test is: What does *each individual bond disclose?* If the face of one of the bonds had disclosed that, as a matter of fact, the recital in it, with respect to the constitutional limitation, was false, of course, the county would not be bound by that recital, and would not be estopped from pleading the invalidity of the bonds in this particular. Such was the case in *Lake County vs. Graham* and *Dixon County vs. Field.* But that is not the case."

The Court then proceeds in the *Chaffee County* case to state its conclusion and the principle on which it rests, and which we maintain fully covers the case at the bar. The language of this Court is as follows:

"Here, by virtue of the statute under which the bonds were issued, the County Commissioners were to determine the amount to be issued, which was not to exceed the total amount of the indebtedness at the date of the first publication of the notice requesting the holders of county warrants to exchange their warrants for bonds, at par. The statute, in terms, gave to the Commissioners the determination of a fact—that is, whether the issue of bonds was in accordance with the Constitution of the State and the statute under which they were issued, and required them to spread a certificate of that determination upon the records of the county. The recital in the bond to the effect that such determination has been made and that the constitutional limitation had not been exceeded in the issue of the bonds, taken in connection with the fact that the bonds themselves did not show such recital to be untrue, under the law, estops the county from saying that it is untrue. *Town of Coloma vs. Eaves*, 92 U. S., 484; *Town of Venice vs. Murdock*, 92 U. S., 494; *Marcy vs.*

Township of Oswego, 92 U. S., 637; *Wilson vs. Salamanca*, 99 U. S., 499; *Buchanan vs. Litchfield*, 102 U. S., 278; *Northern Bank vs. Porter Township*, 110 U. S., 608."

It is impossible to affirm the judgment of the Circuit Court in favor of the County without overruling the *Chaffee County* case.

V.

The recital in the bond in question, that it is issued "for VALID floating indebtedness of the said county," creates an estoppel, which is conclusive in favor of the bona fide holder of such bonds.

The bonds in question thus recite that they are issued for a lawful purpose, namely, to refund *valid* floating indebtedness. We have already pointed out the fact that the question of issuing these bonds to fund outstanding warrants of the county was submitted to a vote of the people of the county, and they voted almost unanimously to issue these bonds. They were issued; and they contain the recital that they are issued "for *valid* floating indebtedness of the said county."

That such a recital estops the county to say that the warrants funded were invalid is well settled both on principle and authority. We have already called the attention of the court in this brief, *supra*, page 18, to the decision of this court in *Jasper County vs.*

Ballou, 103 U. S., 745, a case directly in point. The court there says (p. 752):

"If the people intended to rely on their defenses to the old bonds, then was their time for them to speak, and by their vote say they would not recognize them as binding obligations. By voting the other way they, in effect, accepted them as legal, and subsisting for the purposes of the proposed extention of time at reduced interest, and said to the holders, if their proposition was accepted no question of illegality would be raised. Their offer having been accepted, they are now estoped from insisting upon an irregularity which they have by their votes voluntarily waived with a full knowledge of the facts. The case is clearly, as we think, within the principle acted on by the Supreme Court of the State in *President and Trustees of the Town of Keithsburg vs. Frick, 34 Ill., 405.* As was very properly said below by the learned circuit judge, 'There must be an end of these contests and defenses some time or other.' There must be a time when the people in their political capacity are concluded by their contracts as much as individuals, and we think that where the people of a county, at an election held according to law, authorize their corporate or political representatives to treat certain outstanding county obligations as 'properly authorized by law' for the purpose of negotiating a settlement with the holders, and the settlement which was contemplated has been made, all contests as to the validity of the obligations must be considered as ended.

"This disposes of all questions as to the excessive issue of bonds. For all the purposes of this case the original bonds must be taken as binding."

So, also, the recent case of *Graves vs. Saline County*, 161 U. S., 359, is directly in point. In that case this Court, Mr. Justice SHIRAS giving the opinion, referred with approval to the decision in the case of *Jasper County vs. Ballou*, 103 U. S., 745, and decided the *Saline County case* in exactly the same way.

In that case *Saline County*, Illinois, on a vote of its people, issued refunding bonds to refund, among

others, $25,000 bonds originally issued by the county to the Belleville and Eldorado Railroad Company, which bonds, under the decision of this court in *German Savings Bank vs. Franklin County*, 128 U. S., 526, and the decision of the Supreme Court of Illinois in the case of *Town of Eagle vs. Kohn*, 84 Ill., 292, were *absolutely void even in the hands of bona fide purchasers for value* (p. 362). Such refunding bonds contained this recital:

"This bond is one of a series of like tenor and issued for the purpose of funding and retiring certain binding, subsisting legal obligations of said county, which remain outstanding and unpaid, under the provisions of an act [here citing the funding act] and in pursuance of a vote of a majority of the legal voters of said county voting at an election legally called under said act the 6th day of November, 1883. We hereby certify that all the requirements of said acts have been fully complied with in the issue thereof. In testimony whereof," &c.

We repeat that this case as well as the case of *Jasper County vs. Ballou*, *Supra*, which it follows, fully covers the case of Gunnison County, Colorado, at the bar, even if the defendant's contention is right that the warrants were void. For in the *Graves case* the bonds of Saline County which were funded were declared to be void even in the hands of *bona fide* purchasers; and what can be "deader" than a bond that is held by the Supreme Court of the United States and the Supreme Court of Illinois to be absolutely void in the hands of *bona fide* purchasers for value without notice? The exact point *in Saline County vs. Graves* is that a bond issued by vote of the people to refund such a bond as that is good in the hands of a *bona fide* holder, especially where the refunding bond recites that it is issued to refund a valid obliga-

tion. It is not within the power of any ingenuity or casuistry to distinguish that case from this, even if it be conceded that the warrants in this case surrendered for the refunding bonds were void, a proposition, however, which we contest in other portions of the brief (See extract from Judge SHIRAS' opinion, *ante* pp. 19-20).

There have also been several decisions in the United States Circuit Court of Appeals to the same effect:

City of Huron vs. Second Ward Savings Bank, 86 Fed. Rep., 272.

West Plains Township vs. Sage, 32 U. S. App., 725.

Kiowa County vs. Howard, 49 U. S. App., 642.

City of Cadillac vs. Woonsocket Institution for Savings, 16 U. S. App., 546.

National Life Insurance Company vs. Board of Education, 27 U. S. App., 244.

The principle, too, is well settled that the fact that a municipal corporation has diverted the proceeds of its negotiable securities from the lawful purpose for which they appear on their face to have been issued to an unlawful purpose is no defense to an action against the person who had no knowledge of or part in the diversion.

Anderson County vs. Beal, 113 U. S., 227.
Cairo vs. Zane, 149 U. S., 122.

To hold that a purchaser of municipal bonds must trace back to its very origin the indebtedness which is represented thereby, especially when the recitals in the funding bonds are that they are issued for valid indebtedness, is to put upon such *bona fide* holder a burden which, as a practical matter, he can not possibly sustain. As is well known, most municipal indebt-

edness is not paid when it becomes due, but is refunded again and again, usually at lower rates of interest. Refunding bonds are universally and most naturally understood not to be impeachable on the ground that the debt thus refunded is not valid, especially if the refunding bonds have been specifically authorized by a vote of the people. As was said by this Court in the case of *Jasper County vs. Ballou*, 103 U. S., 745, at the time of such proposed refunding, it is the duty of the municipality to speak out, if it ever intends to do so, and then to challenge and contest the indebtedness instead of refunding it; but if it does not do this, but on the contrary recognizes it as its valid indebtedness, and goes further, as in the present case, and by the vote of the people of the county expressly authorizes its refunding, and then the county officers pursuant to such vote effect such refunding, and recite in the refunding bonds which are issued that they are issued for *valid* indebtedness, every principle of law and morality requires that the county be forever estopped from asserting as against a *bona fide* holder any supposed illegality of the original indebtedness.

These funding bonds in suit in the case at bar were not on any theory invalid upon their face. They did not show on their face the total amount of the issue. But a purchaser might know the total amount of bonds that had been issued, and the assessed valuation of 1882, and, nevertheless, could form no correct opinion as to the validity thereof. The issue of bonds to pay off or refund an existing indebtedness does not increase the debt or create a new debt. It merely changes the form of an old debt.

Powell vs. Madison, 107 Ind., 106.

Farson, L. & Co. vs. Louisville, 30 S. W., 17 (Ky.).
Miller vs. School District, etc., 39 Pac., 879 (Wyoming).
City of Poughkeepsie vs. Quintard, 136 N. Y.
Marion County vs. Harvey County, 26 Kansas, 181.
Blanton vs. Commissioners McDowell County, 101 N. C., 532.
Los Angeles vs. Field, 112 Cal., 319.
Sioux City vs. Weare, 59 Iowa, 95.
Opinion of Justices, 81 Maine, 602.

All of the floating indebtedness of the defendant county which was incurred prior to the assessment of 1881, not being subject to any debt limitation of the Constitution, was valid, and could be legally funded.

The Supreme Court of Colorado has so decided in *Lake County vs. Standley*, 49 Pac., Rep., 23.

See, also, to the same effect, *Powell vs. City of Madison*, 107 Ind., 106.

The Circuit Court permitted defendant county, over the plaintiff's objection and exception, to go behind the assessment of 1882, behind the face of the bonds, and behind the act under which they were issued, and into the assessed valuations and financial statements of prior years, made under another statute than the one recited in the bond, for the purpose of ascertaining whether this floating indebtedness, represented by county warrants, was valid or not. In other words, the Court below entered, against the plaintiff's objection and exception, upon the trial of the question of the

validity of these county warrants (which might all be valid or not, depending on the time when the debts were created which were represented by the warrants) with the view of holding the purchaser of the funding bonds to notice and knowledge which he could not derive from the face of the bonds, the Constitution, assessed valuation, the statute under which the bonds were issued or any other statute. This cannot be done as against a *bona fide* holder of bonds containing such recitals as these bonds contain.

In *Chaffee County vs. Potter*, 142 U. S., 355, the Court said (p. 363):

"The purchaser might even know—indeed, it may be admitted that he would be required to know—the assessed valuation of the taxable property of the county, and yet he could not ascertain, by reference to one of the bonds and the assessment roll, whether the county had exceeded its power, under the Constitution, in the premises. True, if a purchaser had seen the whole issue of each series of bonds, and then compared it with the assessment roll, he might have been able to discover whether the issue exceeded the amount of indebtedness limited by the Constitution. But that is not the test to apply to a transaction of this nature."

But we respectfully suggest and show that the Court is mistaken, however, in the *Chaffee County case* in the *arguendo* observation that a purchaser with full knowledge of the total amount of the issue of the funding bonds in the Chaffee County case and the assessed valuation could discover whether the issue exceeded the limitation or not. Before he could make any such discovery, or be certain of that fact, he would, under the language of the constitution of Colorado, quoted below, and the recent decision of the Supreme Court of Colorado construing such language (*Lake Co. vs. Standley*, 49 Pac.

Rep., 23), have to go back into the warrant indebtedness, and ascertain **when it arose, and whether or not it was affected by the constitutional limitation.** The date of the warrants would not control this question. **A warrant is an evidence of a preceding indebtedness,** and, as we have before stated, all of this indebtedness that arose before the completion of the valuation by the Board of Equalization on September 1, 1881, was in no manner affected by the constitutional limitation, for the reason that, until that time, the assessed valuation did not reach $1,000,000.

The language of the constitution limits

" the aggregate amount of indebtedness of any county for all purposes, *exclusive of debts contracted before the adoption of this constitution.*"

The section making the limitation also expressly provides

" That this section shall not apply to counties having a valuation of less than $1,000,000,"

so that the limitation did not apply to any indebtedness incurred by Gunnison County until the valuation reached $1,000,000 which was not until September 1, 1881 (Record, pp. 46, 47).

It is in this aspect of the case that the specific and positive recitals, to the effect that these bonds are within the constitutional debt limitation, and that they were issued to fund *valid floating* indebtedness, have controlling and inexpugnable force. It could not be seen from the Constitution, the assessed valuation and the whole issue of bonds, that these recitals were false. There would be nothing on the face of these bonds, even if they had recited the full amount

of the issue (as they did not), which, taken with the assessed valuation and the constitutional provision, would have shown that the recital was false.

Opposing counsel refer in support of the defendants' contention to the case of *Lake County vs. Graham*, 130 U. S., 674, which was an action upon certain bonds issued by Lake County under the act of February 21, 1881. The vital and controlling distinction between the case of *Lake County vs. Graham*, on the one hand, and *Chaffee County vs. Potter* and the case at bar, on the other, is this :

1. In the *Graham case* the funding bond contained no recital that the constitutional debt limit had not been exceeded, the court saying on this point (pp. 680, 681) :

> The bond containing " no express reference to the Constitution nor any statement that the constitutional requirements have been observed, there is, therefore, no question as to the constitutional language, because there is no recital in regard to it."

2. It contained no recital that it was issued to fund valid floating indebtedness.

3. Each bond in the *Graham case* recited that the issue amounted to $500,000, which when compared with the assessed valuation made each bond show on its face that it was in excess of the limit prescribed by the Constitution.

4. The decision in that case was rendered on an agreed stipulation to the effect (p. 676) that if—

> " Section 6 of article 11 of the Constitution is a limitation upon the power of the defendant county to contract any and all indebtedness, including all such as sued upon in this section, then it is admitted that the claimed indebtedness was incurred after the limitation prescribed by the constitution had been reached and exceeded by the defendant the County of Lake ; and in

that case and for the purposes of the action it is admitted that the defendant [Lake County] is entitled to judgment thereon, unless defendant is estopped from making such defense by the recitals contained on the face of the bonds and the coupons sued on in this action."

This court having held that the debt limitation provision of the Constitution applied to ordinary warrant indebtedness as well as indebtedness created by bonds, then by the stipulation the county was entitled to judgment, unless the court should further hold that the recitals in the bonds estopped the county from making the defense. But the court, on looking at the bond, found that there were no recitals either that it was issued to fund a valid debt or that the amount of the bond did not exceed the debt limit prescribed by the Constitution; and it further found that the statute of February 21, 1881, itself, under which the bonds were issued, did not prescribe any limitation such as that contained in the Constitution. Under these circumstances the Supreme Court decided that the county was not estopped.

Answering the suggestion made in that case that the bondholder was not chargeable with knowledge that the limit of the Constitution had been exceeded the court said (p. 683):

"To the suggestion that the purchaser was not chargeable with knowledge of the fact that the maximum of 12 mills on the dollar had been exceeded—for the $500,000 of debt ascertained to be due on the day of notice, and for which bonds were issued, might have been partly or wholly created before the Constitution was adopted, and, therefore, be excluded from the rule by the very terms of the Constitution itself—there are two decisive answers. *First*, the bill of exceptions shows that the debt was not so created, either in whole or in part. *Second*, the defendant in error is not en-

titled to an estoppel even if such an inference might have been drawn from the recital of conformity."

Such recital of conformity being only that the bond was issued in conformity with the act of February 21, 1881, which act contained no debt limitation like the one contained in the Constitution. An equally conclusive answer would have been that no such question was in the record, since the stipulation on which the case was decided took any such question out of the case.

VI.

The so-called "financial statements" cannot be introduced in evidence as against the bona fide holder of the bonds in question containing such recitals as these bonds contain.

We have printed in full in the appendix to this brief that section of the Act of March 24, 1877, to wit, Section 30, which provides for the county commissioners making certain semi-annual financial statements.

These financial statements should not have been admitted in evidence for several reasons:

(1) Because the bonds in the present case, like the bonds in the case of Chaffee County vs. Potter, and unlike the bonds in the case of Sutliff vs. Lake County, were ISSUED UNDER ANOTHER AND DIFFERENT STATUTE *from the one which required the so-called financial statements to be made--to wit, under the funding act of Feb-*

ruary 21, 1881 (which statute is also printed in the appendix to this brief).

This distinction was pointed out by the Court of Appeals in this case (Record, pp. 182, 183) and the same distinction was pointed out by this court in *Sutliff vs. Lake County*, 147 U. S., 230, in commenting upon *Chaffee County vs. Potter*. 142 U. S., 355, which latter case was in this respect precisely like the present case.

We regard this objection to the admission of the so-called " financial statements " as fatal. The Funding Act of 1881 recited in the bonds covers the whole subject of funding floating indebtedness, and the said act of March 24, 1877, has no application to these Funding Bonds.

(2) Because the bonds in the present case, like the bonds in the case of Chaffee County vs. Potter, and unlike the bonds in the case of Sutliff vs. Lake County, contain AN EXPRESS RECITAL *" That the total amount of this issue does not exceed the limit prescribed by the constitution of the State of Colorado."*

The estoppel produced by the specific recital in the bonds made directly to the investor and intended to influence his action, cannot be overcome by statements or representations made at other times and for other purposes, and not in connection with the issue of the bonds, and which never came to the notice of the bondholder. The recital in the bond is addressed by the county to every person who becomes a holder of the bonds. It was intended to be acted upon by the bondholder, and it was acted upon by the bondholder, and that is the statement which binds and estops the county. What may have been stated by the

county officers at other and different times in connection with other and different matters and for other and different purposes under the requirements of another and different statute, is wholly immaterial in view of these express and solemn recitals in the bonds themselves.

This Court held that the bonds involved in *Sutliff vs. Lake County*, 147 U. S., 230 *contained no recital that the debt limitation prescribed by the constitution had not been exceeded*, and the bonds in question in that case were issued under the act of March 24, 1877, which required by said Section 30 of said Act a statement of the indebtedness of the county to be entered upon the county records.

The present case in this respect is precisely like the case of Chaffee County vs. Potter, 142 U. S., 355, which was thus distinguished in the case of Sutliff vs. Lake County, 147 U. S., 230.

The bonds in question in the present case were issued under the same statute as the bonds in the case of *Chaffee County vs. Potter*, to wit, under the Act February 21, 1881; and the court in giving its opinion in the *Sutliff* case, expressly distinguished that case as follows *(Sutliff vs. Lake County*, 147 U. S., 230, 237*)*:

"That decision [*Dixon County vs. Field*, 111 U. S., 83] and the grounds upon which it rests, were approved and affirmed in *Lake County vs. Graham* and *Chaffee County vs. Potter*, above cited, each of which arose under the article of the constitution of Colorado now in question, *but under a different statute* [to wit, the Act of February 21, 1881], which did not require the amount of indebtedness of the county to

be stated on its records. In *Lake County vs. Graham* each bond showed on its face the whole amount of bonds issued and the recorded valuation of property showed that amount to be in excess of the constitutional limit, and for this reason as well as *because the bonds contained no recital upon that point*, the county was held not to be estopped to plead that limit (130 U. S., 682, 683). In *Chaffee County vs. Potter*, on the other hand, the bonds contained an express recital that the total amount of the issue did not exceed the constitutional limit and did not show on their face the amount of the issue and the county records showed only the valuation of property."

On principle and authority the so-called "financial statements" were not constructive notice to the plaintiff.

We might well stop here our argument on this proposition by citing the *Chaffee County* decision of this Court; but in view of the importance of the principles and questions involved in the question of the admission in evidence of these so-called "financial statements" as against a *bona fide* holder of bonds containing recitals like the present, we have thought it due to the court to state more fully the arguments and views which we believe to be sound with regard to the character of such so-called financial statements as constructive notice and the question of their admissibility in evidence, both generally and with special regard to the facts of the present case.

In the absence of such recital it may be held that the plaintiff in the case of *Sutliff vs. Lake County* (on bonds issued under the Act of March 24, 1887) was obliged to take notice of the semi-annual statements if duly recorded; and hence we need not, in this case, maintain that that case, on honds issued under the

Act of March 24, 1877, on the facts and statute before the court, was not correctly decided. The court, in its opinion in that case, referred to these financial statements as a part of the public records of the county, and, possibly from that fact, some misunderstanding apparently existed in the mind of the Circuit Court in the present case as to the character and effect of these "financial statements" as parts of the public records of the county. The statute which provides for the making of these "financial statements" *does not anywhere describe that they shall be constructive notice of anything to anybody.* The statute merely provides that these statements "shall also be entered of record by the clerk of the board of county commissioners in a book to be by him kept for that purpose only, which book shall be open to the inspection of the public at all times." The statute, therefore, merely makes these financial statements when entered in a book kept for that purpose only part of the records of the county. And this is all that the case of *Sutliff vs. Lake County* decided. It is evident that this court in that case did not decide, or undertake to decide, that any holder of bonds with such recitals as the present in regard to the debt limit was obliged to consult the county records for any purpose, or that he had constructive notice of them.

The recent decisions of this court on the further point in question conclusively establish this fact.

Case of Evansville vs. Dennett, 161 U. S., 434, and its controlling application to the present case.

The United States Circuit Court of Appeals for the Seventh Circuit had held, in the case of *Post vs. Pulaski County*, 9 U. S. App., 1, and we believe had held, also, in other cases, that the *bona fide* holder of negotiable bonds containing full recitals was, nevertheless, bound to consult the records of the county, including, among other things, the orders and other proceedings under which the bonds were issued, and held, in effect, that he had constructive notice of such public records. At length, however, and after several such decisions, the judges of that court united in certifying up to the Supreme Court of the United States certain questions with a view to obtaining the final and conclusive ruling of this court as to whether or not the holder of bonds, with full recitals, was obliged to take notice or had constructive notice of the public records of the county or other municipality issuing bonds; and this court rendered its decision on that subject in the case of *Evansville vs. Dennett*, 161 U. S., 434, and the decision of this court in that case has settled conclusively and forever the fact that such *bona fide* holder of municipal bonds containing full recitals is not obliged to consult the public records of the county, nor does he have constructive notice of what is contained in such records. The recital in the case of the bonds issued by the City of Evansville was that they were issued " in pursuance of an act of the legislature of the State of Indiana and ordinances of the city council of the said city passed in pursuance

thereof." One series of bonds involved in that case recited that they were issued "*by virtue of a resolution of said City Council passed May 23,*" *1870*" thus mentioning specifically the date of the resolution; and yet this Court held that a *bona fide* purchaser of such bonds did not have constructive notice of such resolution, though duly entered on the official records of the City.

In the case of *Evansville vs. Dennett*, 161 U. S., 434, referred to *supra*, the questions propounded by the Circuit Court of Appeals to the Supreme Court of the United States were as follows (p. 439):

"1. Does the recital in the series of bonds issued in payment of subscription to the Evansville, Henderson and Nashville Railroad Company, that they were issued in 'pursuance of an Act of the Legislature of the State of Indiana and ordinances of the City Council of said city, passed in pursuance thereof,' put a purchaser upon inquiry as to the terms of the ordinances under which the bonds were issued?

"2. Does the recital in the series of bonds issued to the Evansville, Carmi and Paducah Railroad Company, that they were issued 'by virtue of a resolution of said City Council passed May 23, 1870,' put a purchaser upon inquiry as to the terms of that resolution, and charge him with knowledge of its terms?

"3. Do the recitals in the bonds issued to the Evansville, Carmi and Paducah Railroad Company, as against a *bona fide* purchaser for value of such bonds, estop the City of Evansville from asserting that such bonds were not issued, for stock subscribed, upon a petition of two-thirds of the resident freeholders of the city, distinctly setting forth the company in which stock was to be taken, and the number and amount of shares to be subscribed?

"4. Under the recitals in the bonds issued to the Evansville, Carmi and Paducah Railroad Company was a *bona fide* purchaser for value put upon inquiry to ascertain whether a proper petition of two-thirds of the residents of Evansville, freeholders of that city, had been presented to the Common Council, before

that body had subscribed for stock in the said railroad company?

"5. Was a *bona fide* purchaser for value of the bonds issued to the Evansville, Carmi and Paducah Railroad Company charged by the recitals in said bonds with notice that they were issued in pursuance of an invalid act, and in pursuance of an election under it, or had such a purchaser a right to assume, from the recital, that the prerequisites of both the valid act and the invalid act had been observed by the Common Council before the issuance of such bonds?"

Copies of the bonds containing the recitals referred to are given at pages 435–437 of the opinion of the Supreme Court.

In giving its opinion the Court says (p. 446):

"The Court answers the first, second and fourth questions in the negative, and the third in the affirmative. Its answer is in the negative to the first clause, and in the affirmative to the second clause, of the fifth question."

In giving its opinion in the *Evansville case* the Court also says (p. 443):

"As, therefore, the recitals in the bonds import compliance with the city's charter, purchasers for value, having no notice of the non-performance of the conditions precedent, were not bound to go behind the statute conferring the power to subscribe, and to ascertain, by an examination of the ordinances and records of the City Council, whether those conditions had, in fact, been performed. With such recitals before them they had the right to assume that the circumstances existed which authorized the city to exercise the authority given by the Legislature."

This decision of the Supreme Court of the United States, made upon great deliberation, and overruling prior decisions of the Circuit Court of Appeals of the Seventh Circuit, shows that the Supreme Court stands by its prior decisions, and it completely negatives the

position taken by the defendant county and upheld by the Circuit Court—to wit, that the plaintiff, as the *bona fide* holder of the coupons in question, is charged with constructive knowledge of the "financial statements" spread upon the records of the county, contradicting or claimed to contradict the specific recital in the bonds.

Note that the recitals in the bonds in the case of *Evansville vs. Dennett*, that they were issued "in pursuance of an act of the Legislature of the State of Indiana and ordinances of the City Council of the said city passed in pursuance thereof," were very much weaker than the recitals in the bonds now in question; and yet the Court had no hesitation in arriving at the conclusion that the *bona fide* holder was protected by even those recitals in the bonds, and was not bound to consult the ordinances and records of the City Council, even though these were specifically mentioned by date in the bonds.

We say, therefore, that that part of the act of March 24, 1877, which provides for the making of certain financial statements and entering them of record, merely makes them part of the general records of the county. and on authority of the case of *Evansville vs. Dennett, supra*, the *bona fide* holder of municipal bonds which contain certain recitals, such as are contained in the bonds in question in the present case is not obliged to consult the records of the county, nor does he have constructive notice of such records or of any financial statements entered therein.

No record is constructive notice as to any negotiable paper unless a statute expressly so provides.

The proposition that these financial statements are constructive notice to every holder of bonds as against the contrary specific and positive recitals in such bonds, and that they are constructive notice in the absence of any statute which so provides, recital or no recital, seems to us to be an alarming and revolutionary principle in regard to negotiable instruments for the payment of money. The general principle, we take it, is well settled that, in order to render a thing constructive notice, some statute must so provide. This is the principle laid down by this court in the case of *Burck vs. Taylor*, 152 U. S., 634, 654 :

"If notice was essential to charge them, actual notice should have been given, at least in the absence of any statute providing some means for constructive notice."

The principles and rules as to constructive notice have had an extensive application in regard to conveyances of real estate in this country. The statutes of most, if not all of the States, expressly provide for a public office, known as the registry of deeds, where conveyances of real estate may be recorded. Such office is provided with books and indexes and is open to the public at all times, and any person interested may go and examine such books ; and these statutes *in all cases* further expressly provide that the record of an instrument, duly executed and duly acknowledged, shall be constructive notice of such instrument to all subsequent purchasers of the real estate affected thereby.

The opening of this public office and the recording of these deeds without such provision that the deeds so recorded shall be constructive notice has no effect as giving constructive notice to any one. This is evident from the numerous decisions of the courts to the effect that where a deed is improperly recorded (as, for example, where it has been improperly acknowledged), the record of it in the public records is not constructive notice to a subsequent purchaser. Why? Because in the absence of a statute which expressly so provides such record is not constructive notice.

In 20 American and English Encyclopædia of Law, page 600, summarizing the established rule of law, it is said:

"If an instrument is either not authorized by law to be recorded, or is not authorized to be recorded by reason of its defective execution or the failure to comply with the prerequisites to recordation, its enrollment on the records is of no effect, and it cannot be said that it will charge with constructive notice."

In *McEwen vs. Den*, 24 How., 242, the Court said (p. 244):

"The deed offered in evidence was recorded without legal proof of its execution, and, therefore, a copy of the record could not be evidence. The Court erred in admitting the copy to go to the jury."

In *Olcott vs. Bynum*, 17 Wall., 44, the Court said (p. 59):

"The original deed from Hovey to Olcott and Stephenson never having been registered, *and the registration of the copy being unauthoriled*, it follows that the certified copy of the registered copy was a nullity, and could give no legal right to the grantees which the Circuit Court could recognize."

In *Buel vs Irwin*, 24 Mich., 145, the Court said:

"Apart from the curative act of 1861, this certificate was plainly insufficient to authorize the deed to be recorded. To entitle a deed to registry, its execution by the grantor must be proved or acknowledged, and when acknowledged the evidence of the acknowledgment of execution by the grantor must appear by the certificate, and if the acknowledgment is taken abroad, before a Michigan Commissioner, his certificate must be authenticated by his seal. In this case, the certificate does not show that the grantor acknowledged that *he* executed the deed, and, hence, if otherwise regular, the certificate would be bad, and the proof of execution of the deed, required by the statutes as a prerequisite to registry, would be wanting (*Haden vs. Westcott*, 11 Conn., 129)."

In *Ely vs. Wilcox*, 20 Wis., 523, the Court held that, for want of a certificate of a Clerk that the notary taking the acknowledgment was such, and that his signature was genuine, the deed was not authorized to be recorded, and was, therefore, not notice to any one. Other decisions are cited in a note to this case in 91 Amer. Dec., 436.

Mr. Wade says: "The requirements of the statute, both in regard to the official character of the acknowledging officer and the contents of his certificate, must be complied with in every substantial particular, or the record of the instrument will be inoperative as constructive notice."

Wade on Notice, 2d Ed., Sec. 124.

In *St. John vs. Conger*, 40 Ill., 535, the Court said:

"It is insisted that the record of the copy of the deed from Madison County was sufficient to put subsequent purchasers upon inquiry. *To hold that parties ought to have been put upon inquiry by this record would be precisely the same thing as holding them affected with notice.* This would be giving to the record of an instrument, not entitled to be recorded, the same force as to notice that we give to one legally reduced to record. We do not think any

authority can be found in support of this proposition. On the contrary, the familiar rule, and one laid down by this Court, is that the record of an instrument not entitled by law to be recorded is of no avail as notice *(Moore vs. Hunter*, 1 Gilm., 317*)*. It is said that a purchaser, as a matter of fact, receives the same information from the record of a copy as from the record of an original instrument. That may be true. But the broad difference is this : The statute only authorizes the record of original instruments, and it makes that record conclusive evidence of notice. It matters not that a subsequent purchser has not, as a matter of fact, seen the record. If the instrument has been legally recorded, the law presumes him to have seen it, and holds him to the consequences of such knowledge. Not so as to the registry of a copy. It may be that if a party can be clearly proven to have read the record, he should be held to have derived from it the same degree of actual knowledge that he would have derived from seeing a copy of an instrument in the hands of a private individual. He might be considered as put upon inquiry. But the law does not presume him to have read the record of an instrument not authorized to be recorded. In the case before us there is no evidence that the defendant, and the intermediate parties through whom he claims from the heirs of McNemony, had actual knowledge of the record of the copy or had ever seen such record."

It is true that ordinarily the purchaser of a piece of *real estate* must take notice of any judgment and litigation in the courts of general jurisdiction affecting the title to such real estate. But real estate is property, not negotiable according to the law merchant, and an entirely and wholly different rule prevails with regard to judgments or litigation affecting negotiable instruments.

The purchaser of negotiable paper is not bound to take notice (that is, does not have constructive notice) of any litigation pending, or any judgments which may have been previously rendered regarding such negotiable paper.

This principle has been repeatedly decided by this court and other courts.

That a pending suit, or a judgment in any suit regarding negotiable bonds, is not constructive notice to a *bona fide* purchaser thereof was well settled by this court upon great consideration in the case of *County of Warren vs. Marcy*, 97 U. S., 96. This court states as follows the question there presented (p. 105):

"This brings us to the second question; namely, whether the pendency of the chancery suit for vacating the proceedings of the supervisors, and preventing the issue of the bonds in this case, was in itself constructive notice to all persons of their invalidity, or of the objections raised against them. This question has an important bearing upon the case, for, whilst the bonds may be valid in the hands of a *bona fide* purchaser before maturity, and without notice of any defect or vice in their origin, this cannot be said in reference to one who has such notice, or who is chargeable therewith."

The court, after full consideration of the matter and review of the numerous authorities, answered that question in the negative.

So, also, this court, in the case of *Carroll County vs. Smith*, 111 U. S., 556, said (p. 562):

"The defendant in error was no party to that suit, and the record of the judgment is therefore no eostppel.

The bonds were negotiable, and there was, therefore, no constructive notice of any fraud or illegality by virtue of the doctrine of *lis pendens (County of Warren vs. Marcy*, 97 U. S., 96*)*."

See, also, to the same effect:

Orleans vs. Platt, 99 U. S., 676.
Cass County vs. Gillett, 100 U. S., 585.
Thompson vs. Perrine, 103 U. S., 806.
1 Dillon Munic. Corp., 4th Ed., Sec. 514, and cases cited in State as well as Federal courts.

There is also another principle which is especially pertinent to the present case.

Where it is sought to affect the bona fide purchaser for value of commercial paper with constructive notice, the question is not whether he had the means of obtaining or might have obtained by prudent caution the knowledge in question, but whether not obtaining was an act of gross or culpable negligence.

On this subject we refer to the decision of this Court in the case of *Wilson vs. Wall*, 6 Wall., 83, where this Court approved the well-known judgment of Lord Chancellor CRANWORTH in *Ware vs. Lord Egmont.*

This doctrine applies especially to cases of negotiable paper *(Goetz vs. Bank of Kansas City*, 119 U. S., 551, 560*)*.

Applying this principle to the present case, it is perfectly obvious that a person purchasing one of the

bonds now in question, with its specific and positive recital "that the total amount of this issue does not exceed the limit prescribed by the constitution of the State of Colorado," is not guilty of gross or culpable negligence, or of any negligence whatever, in not looking up all of the records of Gunnison County before purchasing the bonds.

The character of municipal bonds as negotiable securities has been well settled by scores of decisions in this Court and many other Courts. As such negotiable securities, easily marketable, passing from hand to hand, they constitute a desirable and convenient investment for money. The importance of preserving to its fullest extent the negotiable character and standing of such securities is fully as great to the municipalities themselves as to the purchasers of such securities. It is their negotiability that is the chief element of their desirability as an investment, and that has resulted in the reduction of the interest on these securities to the present low rates. But once let it be understood among the investing community, who constitute the market for these municipal bonds, that such securities are not negotiable, but that a purchaser of them —it may be in the City of New York, or Boston, or Philadelphia, or Washington, or Chicago—must himself take a journey to Gunnison County, Colorado, and search out records that existed five, ten, twenty or even thirty years before his contemplated purchase of bonds, and inform himself in regard to all those records before he completes his purchase—we say, once let this be understood, and the market for municipal securities is gone. We do not believe that this Court will give its assent to any such doctrine, or that it is going to hold that financial statements recorded in Gunnison

County in the years 1881 and 1882, in the absence of any statute prescribing that they shall be constructive notice, shall, as against a *bona fide* holder of the bonds of Gunnison County which contain the specific and positive recitals that "the total amount of this issue does not exceed the limit prescribed by the constitution of the State of Colorado," constitute constructive notice to each and every purchaser of such issue of bonds, whenever and wherever the same are purchased no matter how many years after they are issued.

One of the practical objections to any holding that these so-called financial statements were constructive notice to the purchasers of negotiable municipal bonds, and the difficulty of determining just how and when such financial statements become constructive notice to the purchaser, are well illustrated by the colloquy between the trial court and the counsel in the present case (Record, p. 67) :

"Counsel for complainants moved to exclude *(the)* these semi-annual statements on the ground that it has not been shown that they were ever published as required by law.

"THE COURT : By published, you mean put in the newspaper ?

"MR. JOHNSON : The statute, which I presume your honor is familiar with, requires that the board of county commissioners shall make this semi-annual statement and publish it in a newspaper if one be published in the county, and if not, that it shall be posted up at three public places in the county, one being on the court-house door ; and in addition to such publication it shall be recorded in a book kept for that purpose only ; we contend that a purchaser would be entitled to take a county paper of the proper date, examine it and ascertain that no such semi-annual statement had been published, and if he knew of this statute, upon ascertaining that it had not been published, and finally ascertaining that it had not been posted, he would have a right to assume that it was not recorded;

and indeed the wording of the statute would seem to contemplate a record that had been first published and then made a record afterwards.

"MR. THOMAS: It is true, as counsel states, that we have made no attempt to show the publication of these statements; we were able to obtain some evidence of an unsatisfactory character upon that subject, but nothing that was of sufficient importance and weight to justify us in attempting to offer it, as the publication of newspapers at that time was not in a very satisfactory condition in that county; the papers would be published for a few months and then disappear, or would be merged into some other paper, and it is impossible for us to find any of the old files of any of the papers, and they do not seem to have been preserved by the clerk and recorder, and we take it that under the statute it is the record of the statement that is notice, and not the publications in the papers that is notice to the purchaser.

"THE COURT: I think we will have to allow this evidence to stand. I do not regard the publication as of any weight.

"To which ruling of the court counsel for plaintiffs then and there duly excepted."

These remarks were made in view of the discussion which took place in the trial of the cause as to what it is that makes the constructive notice to the bond purchaser. The statute prescribes that these financial statements shall be published in a newspaper, or posted, and recorded in a book. The statute does not itself prescribe that any of these things shall be constructive notice to the purchaser. No wonder, then, that the counsel and the court on the trial of the cause may have been a little perplexed as to determining which one of the things it was that made the constructive notice. The truth of the matter is that none of them did. The difficulty of deciding as to exactly what it is that gives the constructive notice well illustrates the mischief of holding that any of the things gives or can give constructive notice (in the absence

of an express provision in the statute making anything constructive notice) to a *bona fide* purchaser of the bonds, who has bought them, perhaps, ten, twenty, thirty, or even forty years after they were issued and after such financial statements were made.

With all due respect to the opinion of this court in the case of Sutliff vs. County of Lake, 147 U. S., 230, we respectfully submit that section 30 of the act of March 24, 1877, which provides that the county officers shall make semi-annual statements, did not expressly or impliedly provide that such semi-annual statements should have any connection, and they do not have any connection whatever with the issuing of any county bonds.

In considering the force, effect and legal value of the *Sutliff case*, it is to be borne in mind that the record of the case was not before the Supreme Court. The case came before it on two general questions, almost in the nature of moot questions, certified to it by the Circuit Court of Appeals, and the opinion given consisted only in answering those questions. The opinion in that case giving those answers was as general as the questions, and was, so far as appears, unanimously concurred in by the court. It is obvious from the opinion that the court did not consider that it was laying down any new principle or overruling principles and rules which it had many times decided, which are, nevertheless, overruled if the view taken of that case by the learned counsel on the other side is correct.

One would naturally infer from reading the opinion in the *Sutliff County case* that the said act of March 24, 1877, was an act which had for its sole object, or,

at least, for its principal object, the issue of bonds, and that the semi-annual statements being required were, therefore, to be inspected by the bondholder because they were part of the execution of the legislative power under the Statute for the issue of the bonds. The facts with regard to this act of March 24, 1877, we submit, do not sustain any such view. In the first place, the act of March 24, 1877, was the General County Act. It will be recollected that Colorado was admitted as a State in 1876. At the session of the legislature in 1877, the legislature passed an act making a Compilation of county laws, the same being an act entitled "An act concerning counties, county officers and county government, and repealing laws on these subjects," approved March 24, 1877 (General Laws of Colorado, 1877, pp. 218-252).

The title page of these General Laws states that they comprise

"that portion of the Revised Statutes of Colorado and the general acts of the subsequent legislative assemblies of Colorado territory for the years 1870, 1872, 1874, 1876, still remaining in force, and the general laws enacted at the first session of the general assembly of the State of Colorado convened November 1, 1876."

We proceed to make an analysis of the act of March 24, 1877, for the purpose of showing that it did not expressly or impliedly provide that the semi-annual statements prescribed to be made by section 30 should have any connection, and that they do not have any connection whatever with the issuing of any county bonds.

This act contains 143 sections, and it deals with county matters generally. Section 1, for example, pro-

vides that each county shall be "a body corporate and politic, with power to sue and be sued," &c., the first nineteen sections of the act being concerned with the usual general powers of the county, and the county officers, meetings of county commissioners, &c. Then come Sections 20 to 25, which, as stated by the United States Circuit Court of Appeals in this *Lake County case*, contained all the provisions of the said act relative to the issuing of bonds for the purpose for which the present bonds were issued—namely, for county buildings. Then follow Sections 26 to 29, which provide for the issuing of bonds in exchange for county orders. These Sections were probably repealed by the act of February 21, 1881 (Session Laws, 1881, p. 85), entitled "An act to enable the several counties of the State to fund their floating indebtedness," which repeals all acts or parts of acts in conflict therewith. Then follows Section 30, which provides as follows:

"SEC. 30. It shall be the duty of the Board of County Commissioners of each county to make out semi-annual statements at the regular sessions in January and July, at which times they shall have such statement published in some weekly newspaper published in the county, if there be such published; and, if there be no newspaper published in the county, such Commissioners shall cause such statements to be posted in three conspicuous places in said county, one of which shall be the Court House door; and such statement shall show the amount of debt owing by their county, in what the debt consists, what payments, if any, have been made upon the same, the rate of interest that such debts are drawing, also a detailed account of the receipts and expenditures of the county for the preceding months, in which shall be shown from what officer and on what account any money has been received, and the amounts, and to what individuals and on what account any money has been paid, and the amounts; and shall strike the balance, showing the amount, deficit, if any, and the balance in the treasury, if any, and the statement thus made, in addi-

tion to being published as before specified, shall also be entered of record by the Clerk of the Board of County Commissioners in a book to be by him kept for that purpose only, which book shall be open to the inspection of the public at all times."

Section 31 provides for the organization of precincts; section 32, for the seal of the board of commissioners; section 35, how claims against the county are allowed; section 36, how county orders are to be signed; section 37, appeal from the decision of the broad of commissioners on allowance of claim against the county; section 38, duties of the county clerk in case of appeal; section 39, books, blanks, stationery, &c., for the use of the county, &c.; section 40, examination of county orders and record of same, &c., down to section 47, regulating in detail the method of transacting county business, and keeping the county records and accounts. Certain sections in the act—48 to 50—relate to the county judge. Sections 51 to 61 relate to the county clerk. Sections 62 to 79, to the county sheriff. Sections 80 to 98, to the coroner; sections 99 to 115, the county treasurer; sections 116 to 120, the county surveyor; sections 121 to 123, the county assessor; sections 124 to 126, justices of the peace and constables; sections 127 to 143, miscellaneous provisions.

We have given this brief analysis of the act of March 24, 1877, and have quoted the said Section 30 for the purpose of showing that there is not a word or syllable in the said Section 30 which has any reference to or any necessary connection with the issue of bonds of the county. The said Section 30 provides that these semi-annual statements shall be made out at the regular sessions in January and July, and provides for the

publishing of these statements in newspapers or posting in the county. The obvious purpose of this is to inform the people of the county of county affairs. That it has no connection with a bond issue, and that it does not intend to inform the bond purchaser, is obvious from a moment's reflection. It is provided that these statements shall be made *at the regular sessions in January and July*, and the statement of the debt is to be made up at that time as of that date; *whereas a bond issue might be made at any other time during the year*, and these debt statements thus made in January and July would not show or purport to show indebtedness at the time of the issue of the bonds. Is it conceivable that, if this section 30 was intended to have or does have any direct connection with a bond issue, such as to make it necessary that the bond purchaser should examine such statements, it would not have provided that the county commissioners should make a statement of the indebtedness at the time of the issue of the bonds, and should file such statement, and that the bond purchaser should be bound to examine the same? Is it conceivable that the statute would have provided for statements in January and July, and that these should be taken as notice to the bondholder of the indebtedness which existed, not at those times, but at the time of the issue of his bonds at some other time of the year?

The true explanation of the said section 30 is that this is merely a section that marks out the administrative duty of the county officers as to keeping the records of the county, and that the same shall be published or posted for the information of the inhabitants

thereof. The periods at which they are made, and the fact that the section contains no reference whatever to any bond issue, show that the section was not intended to have, and does not have, any direct connection with a bond issue.

Similar provisions exist in the General Statutes of other States, and it has, we believe, never been determined that these statements have any other effect than to make such semi-annual statements a part of the ordinary records and accounts of the county, and give to them only the usual effect of such records and accounts. In other words, there is nothing extraordinary or unusual in section 30 of this compilation of the county laws of Colorado. There is no basis or warrant for the argument that this is to be treated in any other respect than as the ordinary records of the county.

For example, the General Statutes of Iowa, so long ago as 1860 (Revision of 1860, p. 51), carrying forward a provision to the same effect in previous acts, provided that the county board of supervisors, after each regular or special meeting, should publish in at least one newspaper, if there be one, if not, by posting on the court house door, a schedule of the receipts and expenditures of the county, which shall state the names of the claimants, the amount claimed, the amount allowed, for what purpose allowed, and a full statement of the amounts of the treasurer's accounts at the last settlement as on his balance sheet, &c.—all this obviously for the information of the taxpayers and citizens of the county.

Other States have in their General Statutes regarding counties similar provisions requiring county offi-

cers at stated periods to make, record and publish statements of the indebtedness of the county, &c., &c. We have not attempted to make any exhaustive search to find such statutes; but we have taken at random the statutes of a few States which we happened first to examine.

KANSAS.

"SEC. 33. *County orders.*—The board of county commissioners, at their July session of each year, or oftener if they deem it necessary, shall carefully examine the county orders returned by the county treasurer, by comparing each order with the record of orders in the clerk's office. They shall cause to be entered on said record opposite to the entry of each order issued the date when the same was canceled. They shall also make a list of the orders so canceled, specifying the number, date, amount and the person to whom the same was payable, and enter the same on the journal of the board.

"SEC. 34. *Receipts and expenditures.*—The boards of commissioners of their respective counties shall cause to be made out and published, yearly, in at least one newspaper in their county, if such there be, a report of receipts and expenditures of the year next preceding, and the amounts allowed, and *a detailed statement of the indebtedness of the county*, at the end of each year; but, if there be no newspaper printed in said county, their said statement shall be posted in at least five public places in said county.

"SEC. 35. *Statement of sums allowed.*—The board of county commissioners shall cause to be publised a statement, at the close of every regular or special meeting, of all sums of money allowed, and for what purpose; said statement to be published once in some paper of general circulation in the county. They shall also publish a statement of the estimate of expenditures for the various purposes upon which they based their levy of a tax for the various purposes of revenue" *(Compiled Laws of Kansas, 1885, pp. 267, 268).*

MISSOURI.

"SEC. 3187. *Court to make out account of receipts and expenditures, etc.*—And the said courts shall, at the same time make out *a statement of the amount of debt due by their counties* and a detailed account of the receipts and expenditures of the same for the preceding year, showing from what officer and on what account any money has been received, and to what individuals and on what account any money has been paid, and shall strike the balance, showing a deficit, if any, or the balance in the treasury, if any (R. S., 1879, sec. 5390).

"SEC. 3188. *Statement to be recorded and published.*—The facts thus ascertained, and the accounts and statements thus made out, shall be entered of record in the said courts and published in some newspaper in each county where any such may be printed; and if there be no newspaper published in the county, then copies of the same shall be put up in the most conspicuous place in each township of the county, by the sheriff, within three weeks after the adjournment of the term at which the proceedings above mentioned shall have been had" (R. S., 1879, sec. 5391; *Revised Statutes of Missouri, 1889, Vol. I., pp. 804, 805*).

NEBRASKA.

"SEC. 25. [*Duties of the Board:*] It shall be the duty of the county board of each county: * * *

"SIXTH. [*Estimate of expenses:*] At their regular meeting in January of each year, to prepare an estimate of the necessary expenses of the county during the ensuing year, the total of which shall in no instance exceed the amount of taxes authorized by law to be levied during that year, *including the amounts necessary to meet outstanding indebtedness as evidenced by bonds, coupons or warrants legally issued;* and such estimate containing the items constituting the amounts shall be entered at large upon their records and published four successive weeks before the levy for that year, in some newspaper published and of general circulation in the county, or, if none is published, then in some newspaper of general circulation therein, and

no levy of taxes shall be made for any other purpose or amounts than are specified in such estimate as published, but any item or amount may be stricken from such estimate, or reduced, at the time the levy is made. If any levy shall be made in excess of such estimate, the tax shall not therefore be void, but the members of the county board and their sureties shall be jointly and severally liable upon their official bonds for the full amount of such excess, which shall be collected by civil action as in other cases, for the use of the school fund of the county. If the members of the said board neglect to comply with any other provisions of this section the tax shall not therefore be void, but they shall be liable to a penalty of five hundred dollars, to be recovered by civil action as in other cases, for the use of the school fund of the county" *(Compiled Statutes of Nebraska, 1889, p. 349).*

Difference between words "assessed valuation" and "indebtedness" as used in the constitution and as respects notice.

It may be that the words "the assessed valuation" as used in the constitution point to a record; namely, the valuation as shown by the assessment books or rolls. But there is nothing like this in the constitution as to the word "indebtedness." No record is referred to in the constitution as to that; and, so far as the constitution is concerned, indebtedness is a matter *in pais*, to be determined according to the ordinary principles of law. There is no reason, therefore, why this matter should not have been determined by the county officers in issuing the bonds and in the recitals therein, for such officers are the authorities recognized by the constitution as well as by the statutes as having charge of the affairs of the county and being authorized to act in its behalf. They have charge

and particular knowledge of the county's affairs which a bond purchaser does not and is not expected to have.

(3). *These "financial statements" do not show, or pretend to show, nor did defendant in connection with them attempt to show, the* ACTUAL DEBT AT THE DATE OF THE DELIVERY OF ANY OF THE BONDS."

These so-called financial statements do not show or purport to show the amount of the indebtedness of the county except at the periods of December 31, 1881, June 30, 1882 and December 31, 1882. They did not show when it originated. They did not show how much was current indebtedness payable out of existing tax levies. The bonds in question in this suit were dated December 1, 1882 (Record, pp. 3, 77) and were delivered from time to time from 1882 to 1884. These statements, therefore, do not show the indebtedness on the date of the bonds in question or on the date when they were delivered; and for this reason are inadmissible as evidence.

It was proved that the bonds in question were issued and delivered from time to time, beginning December 1, 1882, down to and including the year 1884 (Rec., pp. 51–53). The defendants did not prove the actual dates when the bonds were issued, nor did they prove the indebtedness of the county on those dates. In fact, they did not prove, or attempt to prove, what amount of indebtedness actually existed on the date when the bonds now in suit were actually delivered.

Indeed, so far as these financial statements are concerned, we maintain that they are not admissible against *any* holder of the bonds, whether he be a *bona fide* holder or not; for they do not tend to show any defense against the bonds in anybody's hands, for they do not

show the amount of the debt of the county when the bond debt was incurred.

The views of the Circuit Court of Appeals on this subject and in respect to the "great fluctuations of the debt between the several semi-annual statements," &c., are, we submit, both forcible and sound (Record, p. 183).

(4) These financial statements do not show or pretend to show WHEN THE INDEBTEDNESS WAS INCURRED *which was represented by the warrants, and which was finally funded into funding bonds. For all that these statements show, such indebtedness may have been incurred prior to the adoption of the constitution, or prior to September 1, 1881, when Gunnison County first attained an assessed valuation of $1,000,000, and up to which time, therefore, the debt-limit clause had no application to that county. The bonds in question in this case recite that they "are issued in exchange at par for* VALID *floating indebtedness of the said county."*

If it be true that the question of debt under the debt limit prescribed by the constitution of the State of Colorado is a matter which cannot be the subject of a recital in the bonds so as to estop a county, but is open to the county to prove in any case in defense of its bonds, then the county has not in the present instance made out its defense, for it has introduced no evidence competent to prove that fact.

The act of March 24, 1877, in providing for the making of these financial statements and entering them in a book to be kept by the county clerk, did not provide that such statements should have any effect whatever as evidence. The object of that statute was not to charge investors in the county's authorized funding bonds with constructive notice, but for the general

information of the citizens and taxpayers of the county. We submit, therefore, that the act of February 21, 1881, is the ENTIRE CODE OF POWER AND REGULATIONS as to the issue of funding bonds to fund floating indebtedness. The statute, even if it has any application to funding bonds issued under the act of February, 21, 1881, did not make the statements *prima facie* evidence, nor any evidence whatever; much less did it make the statements conclusive evidence that such indebtedness existed, which was the effect given to these statements by the Circuit Court in the trial of this case (Rec., p. 72).

The facts that such warrant indebtedness existed, and that the warrants representing such indebtedness were issued after the county attained an assessed valuation of $1,000,000, and that the total amount of such warrant indebtedness exceeded the amount of $1.50, or $3, or $6, or $12 on the $1,000, do not constitute *prima facie* evidence that the indebtedness is incurred in excess of the limit prescribed by the constitution.

This precise proposition has been decided by the Supreme Court of Colorado in the case of *Lake County vs. Standley*, 49 Pac. Rep., 23 (January 18, 1897), referred to more at length *(infra*, p. 104*)*. That case decided that all these facts put together do not even make a presumption that the warrant indebtedness is invalid, but that, if the matter can be gone into at all, the burden is upon the county to show when the indebtedness itself was incurred; and that there is no presumption that such indebtedness was incurred at the date of the issuing of the warrants. We say that this matter cannot be gone into at all as against a *bona*

fide holder, much less against the holder of bonds containing specific recitals like the present ones.

(5) There is no valid proof in this case that the BOARD OF COUNTY COMMISSIONERS *ever made out any of these semi-annual statements.*

These statements are signed by the Commissioners, but their act as individuals is not the act of the Board. The statute requires the *Board*, as such, at its regular sessions in January and July, to make out these statements. The official action of the Board can only be established by the record. No record was introduced. The statements are all tested by the County Clerk, but only one of them has any date upon it. The one for December 31, 1882, is dated as of January 1, 1883. The regular session of the Board was on the first Monday in January (General Statutes 1877, p. 220, Section 439). As the first day of January was a legal holiday, the Board could not be in session. These statements appear on their face to be mere compilations from the books of the County Clerk and Treasurer. They could be made out at one time as well as another; *i. e.*, the data was probably in the account books of the county, as counties generally keep account books from which such matters could be compiled. They are all in precisely the same form.

The statement for the six months ending June 30, 1882, is the only one that would have any bearing on this issue of bonds. Was this made out by the Board? Was it made out at the July session? Was it made out and recorded prior to the 1st day of December, 1882, the day on which the bonds were issued, or prior to the time when the bonds were delivered? There is not a *scintilla* of evidence on which any one of these interrogatories can be answered in the

affirmative. The certificate of the Clerk, the present custodian of the book in which the statement is recorded, is to the effect that it is a full, true and correct copy as the same appears of record in book of statements, but neither the certificate nor the statement itself shows when it was made out or recorded, or that it was ever made out by the *Board.* Indeed, the statement on its face shows that it was made by the Commissioners, merely as Commissioners, and not as a Board *in regular session.* This is a matter of *vital importance.* A person who was contemplating a purchase of these bonds, and knowing of the law requiring this statement to be made out by the Board, at its regular session in July, would have the right to examine or get some one to examine the record of the proceedings of the Board at that session, and, if that record did not show that the Board had taken action in accordance with the statute, he would be entitled to act upon the theory that no such statement had been made, published or recorded. The *making out* by the *Board,* in its capacity as a Board, is the first step towards a valid record. In the absence of this, there can be no valid record. The question does not necessarily arise as to *how* it could be proved that this statement was made out by the Board. There was no attempt to prove it, either by any record or by parol, and, as we have seen (Record, pp. 108-120), the statement on its face appears to have been made by the persons signing it, as Commissioners, *and not as a Board.* The action of a Board expressly required to be taken at a regular session can be proved only by the record proper of the Board.

County Commissioners vs. Hamlin, 31 Kan., 105.

Bridges vs. Supervisors of Clay County, 58 Miss., 817.
Crump vs. Supervisors, 52 Miss., 107.

In *Bridges vs. Supervisors of Clay County, supra*, the Court said :

"Boards of Supervisors bind counties only when acting within the range of their authority, and in the mode and manner *pointed out by the statutes.* Their contracts are evidenced by *the entries on their minutes*, and can no more be varied by proof that the members failed to speak, though they knew that those with whom they were dealing misunderstood the purport of what they were doing, than they can be created and established by silence alone. It takes an affirmative act of the Board within the scope of its authority, *evidenced by an entry on its minutes*, to bind the county by a contract, and, when thus made, the contract is not to be varied, any more than created, by the silence of any portion of the Board and the mistaken assertions of others."

The general principle is that a Board can only speak by its record, and, before it can be said that the Board has done any act that must be done by express requirement at a session thereof, the minutes of the Board, and those only, are the proper proof.

6. *These statements were* NEVER PUBLISHED *as the law requires, and, without such publication, they could not be legally recorded (Colorado State Bank vs. Davidson*, 7 Colo. App., 91 ; Wade on Notice, Sec. 119*)*. The statute provides that the statements shall be made out by the Board at their regular sessions in January and July, at which times they shall have such statements published in some weekly newspaper published in the county, if there be such published ; and if there be no newspaper published in the county, such Commissioners shall cause such statements to be

posted in three conspicuous places in said county, one of which shall be the Court House door, and the statements thus made, in addition to being published as before specified, shall also be entered of record by the Clerk of the Board of County Commissioners in a book to be by him kept for *that purpose only*, which book shall be open to the inspection of the public at all times.

If this statute contemplates the recording of a published statement, then the recording of one not published would give no notice *(Colorado State Bank vs. Davidson*, 7 Colo. App., 91*)*.

This semi-annual statement is an instrument unknown to the common law. It is made, published and recorded by virtue only of this statute. Being in derogation of the common law, it should be strictly construed and closely pursued *(Crane vs. Chandler*, 5 Colo., 21 ; Wade on Notice, Sec. 1122*)*. If the purpose was to give constructive notice of the indebtedness of the county, then a literal compliance with the statute should be required. The statute requires the statement to be made and published at a *certain time*. Why ? Clearly this was done to enable people interested in the matter or dealing with the county to know when they could look for the publication. It requires the publication to be made in a weekly newspaper published in the county. Why was this ? Clearly to enable a person to know just what paper to inquire or send for. It requires, in the event there is no such paper published in the county, that the Commissioners shall cause such statement to be posted in three conspicuous places in the county, one of which shall be the Court House door. Why was this requirement made ? Plainly the Legislature contem-

plated that an effort should be made to bring home, as far as possible, to the people of the county actual notice of the facts required to be set forth in this statement. The publication or posting was a part of the execution of the statement. It takes the place, by analogy, and as far as possible, of delivery of the instrument to those to be affected thereby. What would be the practical business course of a person dealing with the county with knowledge of this statute? He would, at the time fixed by the statute, inquire for and obtain a copy of the weekly newspapers published in the county, or, if there was no such paper published in the county, would look or inquire for the posting on the Court House door. Not finding that the statement had been published or posted he would naturally and justly conclude that it had not been made.

(7.) There is not only no evidence that the statement was ever made by the Board or that the same—such as it was—was recorded before these bonds were issued, but there was no legal evidence that it was ever recorded IN A BOOK KEPT FOR THAT PURPOSE ONLY.

Certified copies of these statements were not the best evidince. The original record was the best evidence, but beyond this these certified copies had no tendency to establish the nature of the book from which they were taken. One of the issues was as to whether these statements had been recorded in a book kept for that purpose only. This could only be determined by some title, label, heading and the general contents of the book. The best evidence of this was the book itself. In *Granley vs. Jermyn*, 163 Pa. St., 501, the Court held that the best evidence of the heading of a hotel register is the register itself. In *Roden*

vs. Brown, 15 So. Rep., 598, the Court held that a bank officer cannot testify as to the contents of the books of the bank without producing them. In *Thomas, Kane & Co. vs. School District of Calhoun*, 48 Mo. App., 408, the Court held that the record of a Board of School Trustees is the only proper evidence of their proceedings. In *State vs. Central Pacific Railroad Co.*, 17 Nev., 259, the Court held that the proceedings of a County Board must be shown by the record. To the same effect is *Yavapai County vs. O'Neil*, 29 Pac. Rep., 430). This book was in possession of defendant and no reason for not producing it other than a desire to conceal it can be imagined (1 Greenleaf on Evidence, Sec. 82). The modification of the rule as to public books and documents (*Id.*, Sec. 91) does not reach the question here. *The question here is as to whether a book was kept of a certain description. This question cannot be answered by a copy of a certain document contained in it.* Nothing short of an inspection will determine the character of the book. The question, then, is as to whether the book shall be produced and let speak for itself or whether both sides shall be required to bring witnesses before the Court who have examined the same to testify relative to those distinguishing characteristics which would determine whether this was a book answering the requirement of this statute. We submit that the Court committed error in allowing parol evidence of the nature and contents of this book. We further submit that the parol evidence was not such in regard to the nature of this book as to warrant taking the case from the jury upon this question.

(8) These semi-annual statements, even if made, pub-

lished and recorded according to law, would not enable a purchaser of these bonds TO FORM ANY CORRECT OPINION IN REGARD TO THE VALIDITY *of the floating indebtedness that was being funded.*

See on this point the case *Lake County vs. Standley*, 49 Pac., Rep. 23, *infra*, p. 104.

We do not under this proposition question the decision in the *Sutliff case.* Nothing, however, but an abstract principle was there discussed or determined. It was merely determined that a purchaser of bonds, issued under the act containing this provision, would in the absence of a conflicting recital be required to take notice of a record made in accordance therewith. It was perhaps *assumed*, but certainly not *adjudicated*, that such record would enable the purchaser to determine whether the bonds were or were not issued within the limitation of the Constitution, but, if so, this was (as shown above *ante*, p. 88) a mistaken assumption.

It is a principle of universal application that a record cannot give constructive notice of anything beyond the facts which the law requires the record to contain, and, for the same reason, he cannot be charged with notice of anything beyond what the record actually contains (20 American and English Encyclopædia of Law, page 599).

The statute requires this statement to show the amount of debt owing by the county, in what the debt consists, etc. It does not require that it shall show *when* the debt was contracted, or whether, when contracted, it was within the constitutional limitation or not. As we have seen, the question as to whether any part of the floating indebtedness that was funded by the issuance of these bonds was incurred in excess of

the constitutional limitation, would depend upon how much of it was incurred prior to the equalization of 1881, for, prior to that, there was no limitation upon the amount of debt that could be contracted. This statute does not require any record to be made, an examination of which would determine that fact.

Even if it were to be assumed and held that a purchaser of negotiable bonds without any recitals would have constructive notice of the so-called financial statements, and would be bound at his peril to examine such statements before purchasing the bonds (and if this were held to be so in the absence of any statute which provides that such financial statements shall be constructive notice—a holding which we believe to be clearly erroneous), yet the recitals in the bonds would in such event constitute an estoppel, precisely on the same principle that an estoppel may and frequently does exist in respect to the title of real estate.

The statutes of most of the States provide for records of deeds and mortgages and other instruments of conveyance of land, and that such records shall be constructive notice to all subsequent purchasers. Nevertheless, the courts uniformly hold that a person may estop himself from relying upon the constructive notice which such records furnish.

This was held in a case in New York in regard to a municipal corporation. *Trustees, &c., of Town of Brookhaven vs. Smith*, 118 N. Y., 6. There the town had

passed certain resolutions recognizing the title of the land in Smith, whereas the records showed that the title was not in Smith, and the Court of Appeals held that the town was estopped to assert or rely upon the record title. The court says (p. 641):

"The authorities in this state are all harmonious on the subject of estoppel *in pais*.

"When a party, either by his declarations or conduct, has induced a third person to act in a particular manner, he will not afterwards be permitted to deny the truth of the admission if the consequence would be to work an injury to such third person or to some one claiming under him (*Wendell vs. Van Rensselaer*, 1 Johns. Ch., 344, 354; *Storrs vs. Barker*, 6 *id.*, 166; *Town vs. Needham*, 3 Paige, 545; *Dezell vs. Odell*, 3 Hill, 215; also see dissenting opinion of Judge BRONSON approved in 47 N. Y., 500; *Brown vs. Sprague*, 5 Denio, 545; *Plumb vs. Cattaraugus C. M. Ins. Co.*, 18 N. Y., 393; *Welland Canal Co. vs. Hathaway*, 8 Wend., 483; *Thompson vs. Blanchard*, 4 N. Y., 303; *Cont'l Nat. Bk. vs. Nat. Bk. Commonwealth*, 50 *id.*, 575; *Armour vs. M. C. R. R. Co.*, 65 *id.*, 111-122; *N. Y. Rubber Co. vs. Rothery*, 107 *id.*, 310-316).

"Numerous cases where this principle has been applied to real estate are collected in Washburn on Real Property (vol. 3, chap. 2, sec. 6), to which reference is made. When so applied it is as effectual as a deed would be from the party estopped.

"The general rule deduced from all the authorities is that if one is induced to purchase land by the acts or representations of another designed to influence his conduct, and creating a reasonable belief on his part under which he acts that he is thereby acquiring a valid title to the same, the party who thus influenced him is estopped from setting up his own title, existing at the time of the purchase, against that of the purchaser.

"The various declarations of the town through the trustees and town meetings must be construed as a single representation. They were all *in pari materia*, and had one purpose—viz., to inform Smith that the town made no claim to the land he desired to purchase."

We, therefore, submit that the admission in evidence

of this semi-annual statement of June 30, 1882, was error, and for a greater reason the statements of December 31, 1881, and December 31, 1882, were inadmissible. The latter was made *after* the bonds were issued and $5,000 of them had passed to Standley.

To hold that the financial statements, warrants, orders of County Commissioners, &c., can be introduced as evidence to overthrow the estoppel produced by the recitals in the bonds is for the County to invoke and use the doctrine of constructive notice to perpetrate a fraud. But Courts never permit this doctrine to be invoked for any such purpose.

This is a principle that will forever stand in the way of any person, whether natural or artificial, retracting such representations as those made in these bonds. The question of fact as to whether the indebtedness which was being renewed by these funding bonds was *valid floating indebtedness was one peculiarly within the knowledge of defendant.* Stanley, who purchased the bonds, had no actual knowledge on the subject. He trusted to and relied upon these representations. The agents of defendants, who made the representations, either *willfully falsified* or recklessly certified to that which they did not know, which was little better. The doctrine of the *Sutliff case*, as applied to any recitals in those bonds, is one thing, but the application of it to overthrow the recitals in these bonds would be another matter. What were these recitals made for? Clearly and certainly, for the purpose of inducing the holders of warrants—then past due, and payment of which was being demanded—to extend the time of payment for twenty

years. They knew, also, that these bonds would go on the market and would pass from hand to hand for value. They knew that these representations would give currency to the bonds. They knew they would reach the hands of such men as Standley, who would place their money in them as an investment. To now allow defendant to allege the falsity of these representations would be to allow it to perpetrate a fraud—an *actual, willful and monstrous fraud.* This has never before been tolerated by a Court of justice. The recital of facts which the Courts have allowed to be disputed have related to facts implied rather than expressed. They were not recitals which, in their nature, were fraudulent, if false. The doctrine of constructive notice can never be invoked as an aid to the perpetration of a willful fraud. It is a doctrine used to balance and adjust equities where no fraud is intended. Suppose a man has a deed on record, but, for the purpose of defrauding a third party, tells him that his grantor has a perfect title, and induces him to buy the property. Will the doctrine of constructive notice aid in the fulfillment of the fraud? Certainly not. But where is there any difference, in principle, between the case supposed and the case at bar? These representations were with reference to definite, specific facts. There is no pretense that a *mistake* was made. They were calculated to *deceive.* A man is presumed to intend the natural results of his acts. They were of such a character that if—as is now claimed—they were absolutely false, they must be pronounced willfully *fraudulent.* Let us see what the Courts have said upon this subject.

In *Converse vs. Blumrich*, 14 Mich., 109, the Court said:

"The laws of constructive notice can never be so applied as to relieve a party from responsibility for *actual misstatements and frauds.*"

In *Groton Savings Bank vs. Batty*, 30 N. J. Eq., 126, the Court said:

"The principle [that the possession of land is notice to others of the possessor's title] which the Lathrops invoke is intended for a shield to protect the equitable rights of those who are entitled to the consideration of equity. It will not be available as a *cover of fraud* nor will it be applied against equity."

In *Wild vs. Gibson*, 1 H. L. Cas., 605, the Court said:

"Constructive notice is resorted to from the necessity of finding a ground of preference between equities otherwise equal, but cannot be applied in support of a charge of *direct personal fraud.*"

See, also, *Gill vs. Hardin*, 48 Ark., 412.

In *Stone vs. Covell*, 29 Mich., 359, the Court said:

"We have heretofore held that a man is bound by his positive and unequivocal assertions of fact, and bound to make good the consequences of their falsehood. And when he asserts as true what he has reason to believe false, and gives no qualification to show that he is not speaking positively and from knowledge, we think there is no sense or justice in exempting him from responsibility (*Converse vs. Blumrich*, 14 Mich., 109; *Beebe vs. Knapp*, 28 Mich., 53; *Beatty vs. Lord Ebury*, L. R., 7 H. of L., 102)."

The principle of constructive notice is always resorted to in order to prevent the person having it from doing an act to the injury of another, and does not apply where the question is whether one was barred by his assent to a *fraud practiced on him* (*Spencer vs. Spencer*, 3 Jones Eq., 404).

The defendant in this case is pleading its *own fraud.* It is asking to be permitted to show that its positive

statements of facts *were false*—not false by mistake, but *willfully false*. It does this upon the flimsy pretext that it had made another record, at another time, and under another law, which, if the purchaser of these bonds had examined, he would have ascertained that this latter statement was false. Even if this conclusion, as to what the former record would show, were correct, we deny that the fraud can be evaded in that way. This former record could only give constructive notice, and that is inadequate to repel a positive fraud.

But we desire again, in the light of this principle, to direct attention to a comparison of the semi-annual statement of June 30, 1882, and the recitals in these bonds. The statement says nothing about *valid* or *invalid* indebtedness, while the recital is that it is *valid*. The statement says nothing about the Constitution, while the recital is that the debt was within its limitations. Back of these recitals was an order entered of record prescribing what the bond should recite. Suppose there was some conflict between these records. Which was a purchaser entitled to believe? The recital was the later record. It was *specific and certain* as to the validity of the debt, while the other was not. It related to a matter not only peculiarly within the knowledge of defendant, but one that it was its *duty* to investigate. The semi-annual statement showed that there was a large floating indebtedness out, and the recitals did not show on their face that any but valid indebtedness was being funded. Indeed, the recitals imported that the Board, in issuing these funding bonds, was carefully discriminating between the valid and invalid indebtedness. The recital, on the face of each bond, that the bond was issued to fund *valid*

floating indebtedness, clearly imported that there were some invalid floating obligations out, but that these were not included in these bonds, and this recital, as to any particular bond, would not be shown to be false by anything appearing in this semi-annual statement. If a purchaser of the earlier bonds must take notice that the Board contemplated issuing further bonds, he would have the right to assume that they would not go beyond the *valid* debt, for all the bonds were to contain this recital. If he would not have the right to make this assumption then, he would occupy the stronger position of being entitled to presume that the Board, in issuing bonds, discriminated between the valid and invalid indebtedness, and inserted this recital only in the bonds that were issued for the valid part.

As to this question of fraud, it will not do to try to make a scapegoat of the Board, and plead the innocence of the people of this county. The people voted these bonds. The procedure of the Board was all entered of record. The whole transaction was open and public. Interest was collected and paid on the bonds for several years. Neither the present Board nor the taxpayers of this county propose to pay that part of the debt which they know is valid. They want to make the issuance of these bonds, containing these false and fraudulent recitals, a means by which they can repudiate all of their valid, as well as their invalid, indebtedness. During the period of over one year that these bonds, containing these recitals, were being issued, no taxpayer came forward and objected to their issuance or to the recitals they contained. They acquiesced in the fraud until they got the full benefit of it.

VII.

The trial court erred in admitting in evidence to contradict the specific and positive recital in the bonds, the list of warrants and memoranda regarding the same.

No particular warrants which were offered in evidence were identified with any of the bonds now here in question. It was not proved when the said indebtedness represented by the said warrants or any of them was incurred. For all that appears the debt may have been incurred before the debt limitation of the constitution had any application to Gunnison County, or the debt may have been incurred long before the date of the warrants. Although the warrants may have been issued in payment of the debt, for all that appears and for all that was shown in connection with the offering of the warrants in evidence, the indebtedness may have been incurred a long time prior to the date of the warrants and to the date of their issue.

The precise point determined in the case of *Lake County vs. Standley*, 49 Pac. Rep., 23 (January 18, 1897), was that a warrant is *prima facie* evidence of a valid indebtedness, and that the burden of proving that it was issued for illegal indebtedness rests upon the county. In that case a rehearing was asked for and granted on the ground then presented by the learned counsel who now represents Gunnison county here before this court, "that *that burden is met by showing that a warrant was issued subsequent to the date when the constitutional limitation had been reached*, since the presumption then attaches that the warrant was

issued for an indebtedness then contracted, and not for an antecedent debt." We have here just quoted the language of the learned counsel for the county as it was stated by the Supreme Court of Colorado showing the precise point that was involved in the rehearing of the said case of *Lake County vs. Standley.* The Court then says (on rehearing June 1, 1897, p. 29):

"That such a presumption cannot be safely indulged is shown by the facts in this case, as it appears that on October 9, 1879, the date of the warrants described, claims were allowed and warrants ordered to issue for an indebtedness that was contracted in May and April preceding. **We think the presumption that the consideration for which a warrant issues is valid obtains until it is shown that such consideration is illegal; and, if illegal because incurred after a certain date, it devolves upon the county to show that fact.** In this view, therefore, it becomes immaterial whether we were technically correct in saying that a major part of the indebtedness for which the warrants were issued was shown by the testimony to have been contracted anterior to the time the constitutional limitation was reached, since it in no way appears from the record that any portion of the indebtedness evidenced by these warrants was incurred at a subsequent date."

The Supreme Court of Colorado, therefore, in the case of *Lake County vs. Standley*, 49 Pac. Rep., 23, decided, and on rehearing (p. 29) again decided, that although a warrant bears date after the limitation prescribed by the constitution becomes operative in a county, and although the amount of the warrants then outstanding may be in excess of the limit prescribed by the constitution, if it be applicable, yet the burden is upon the county to show that such warrants are invalid, and *that this burden is not met by showing that the warrants or any of them bear date after the county*

becomes subject to the constitutional limitation, although the amount of warrants outstanding exceeds the limit prescribed by the constitution, for *non constat* the indebtedness itself was incurred many months or even years prior to the issue of the warrants, and prior to the constitutional limitation being applicable or being reached.

The said suit of *Lake County vs. Standley*, 49 Pac. Rep., 23, was an action by Standley brought upon certain coupons from Lake County funding bonds, and the court, as we have above stated, held that it was not a defense to such bonds to show that the warrants which were refunded thereby were issued after the limitation prescribed by the constitution became applicable to Lake county and after the debt limitation had been reached, because it would not be presumed from those facts that the indebtedness represented by the warrants which were refunded was illegal, or that it had been incurred after the constitutional limitation became applicable to the county.

Furthermore these warrants were not offered in evidence to show, nor did they show, the indebtedness at the particular time when the bonds were issued. Those warrants were clearly not admissible as against the *bona fide* holder of the bonds in question containing the recital, "That this issue does not exceed the limit prescribed by the constitution of the State of Colorado." Those warrants are clearly not admissible in any event as constructive notice to the *bona fide* holder of the said bonds. There is no statute or statute requirement that those old warrants shall be kept on hand, and no requirement that they shall be constructive notice or any notice, or *prima facie* evidence or

any evidence, against the *bona fide* holder of the bonds of the county.

When these warrants were offered in evidence there was no proof or offer to prove any facts which would make these warrants material evidence.

The pencil memoranda made on the packages containing the warrants were clearly not admissible in evidence. These memoranda were not made by anybody in the course of duty, nor were they for any other reason made admissible evidence of anything as against the *bona fide* holder or as against anybody. There was no testimony or evidence accompanying them to prove any fact in issue.

It appears from the testimony which was given that these memoranda were probably made by various persons; it was not certainly known by whom; and that they were probably made when the warrants were funded; and that they were probably not made by county officers but by other persons. The trial court admitted them in evidence apparently on some theory that they formed part of the "records" of the county. With all due respect to the trial court, we feel constrained to say that to admit such evidence as this to impeach the solemn obligations of the county seems like dealing out hard justice (or rather injustice) to the bondholder. These warrants and these memoranda did not prove anything. They were offered in evidence for the purpose in and of themselves of proving the indebtedness of the county, and that such indebtedness was illegal as being in excess of the limit prescribed by the constitution; but they did not in and of themselves prove any such thing, and no testimony or evidence was offered in connection with them which rendered them in any wise admissible.

The views of the Circuit Court of Appeals on this point are well reasoned, and we submit are entirely sound (Record, p. 184, bottom, and 185).

VIII.

The trial court erred in admitting in evidence the orders and proceedings of the county court authorizing the issue of the bonds in question as against a bona fide holder of the bonds with the recitals therein contained. "That this bond is issued * * * under and by virtue of and in full conformity with the provisions of the act," &c.

On this point we need only cite the decision of this court in the case of *Evansville vs. Dennett*, 161 U. S., 434, referred to at length *(Ante, p. 65)*.

The trial Court in the face of the specific contrary recital in the bond held a purchaser to have constructive notice of the certificate, in the orders and proceedings of the County Commissioners authorizing the bonds, as to the amount of indebtedness that was being funded, as well as the semi-annual statements. But this certificate would give no information as to *when* the indebtedness was contracted or whether it was excessive.

See on this point *Lake County vs. Standley*, 49 Pac. Rep., 23, *supra*, p. 104.

An analysis of this funding act will clearly show that

the certificate to be made as to the outstanding warrants was *never intended as a record of the amount of bonds to be issued.* The first section provides for publishing, for the period of thirty days, a notice requesting the holders of warrants to state in writing, within thirty days from the first day of publication, what amount of warrants they will exchange for bonds. The Board then submits to the people the question of funding such warrants as the holders will exchange. In case the people vote in favor of funding, the Board can issue to any person it sees fit bonds in exchange for warrants. The whole amount of bonds shall not exceed the indebtedness at the time of the first publication, "and the amount shall be determined by the County Commissioners and a certificate made of the same and made a part of the records of the county, and any bond issued in excess of said sum shall be null and void."

The people don't vote on any proposition to issue a definite amount of bonds. The issuance of some bonds is not dependent on whether *all* the warrant holders will make the exchange. Neither is it limited to such warrant holders as have agreed in advance to make the exchange. The whole scheme contemplates that the Board shall be placed in a position to make the exchange from time to time, as warrant holders present warrants, and make an agreement with the Board for the exchange. Until this is done, there is no contract. Neither the warrant holder nor the Board is bound until the exchange is made. The bonds actually issued may be for but a small part of the warrant debt. The purpose of fixing the amount of the debt by this certificate is to to limit the amount of bonds that can be issued, but not to fix the amount that must be issued. No debt

was contracted until the bonds were signed and delivered. As these bonds were signed and delivered from time to time, there were separate and independent contracts made with the several warrant holders. The act provided that "each bond shall state upon its face the amount for which the same is issued, to whom issued, and the date of its issuance." The act does not contemplate an issue of an aggregate amount of bonds in bulk, at one time, and as one issue. Only a small part of these bonds were issued in 1882. They were being issued all through the year 1883. The act provides that if the vote is favorable, the Board "*may* issue *to any person* or corporation holding any county warrant or warrants issued prior to the date of the first publication of the aforementioned notice, coupon bonds of such county *in exchange therefor, at par.*" Every issue is a distinct transaction. The evidence in this case is that these bonds were executed only as warrants were presented, and the Board agreed to make the exchange, and this was in accordance with the true theory of the statute. Such of these bonds as were actually issued and delivered after the valuation of 1883 went into effect would be protected by that valuation, and there was no attempt to show what this was.

This certificate, then, was intended to show what amount of valid indebtedness was outstanding. As we have seen, the amount shown by the certificate could exist, as valid indebtedness, if a sufficient amount of it was contracted before the county had an assessed valuation of $1,000,000. On this fact the certificate would throw no light. Neither would it establish the amount of bonds to be issued. Seeing that neither this record nor the record of the semi-annual statement, even if both had to be taken notice of by a purchaser,

would furnish no adequate information as to the validity of these funding bonds, the defendant offered and the Court admitted in evidence the warrants that were funded, with a view of showing that a sufficient amount of them was issued after the county had an assessed valuation of $1,000,000, to make an excessive indebtedness. In other words, the Court absolutely ignored and rejected the recitals of the bonds and treated the case as one in which the excessive indebtedness could be shown by any kind of evidence tending to establish the fact. This was not done on the theory that the plaintiff was not a *bona fide* purchaser, for the Court, after doubting this, finally decided the case upon the *concession* that it was such purchaser. Unless the entire line of adjudication of the Supreme Court since the decision of this Court forty years ago in *Knox Co. vs. Aspinwall*, 21 How., 539, 1858, in regard to estoppel by recitals in bonds is to be overthrown, all of this evidence was improperly admitted.

IX.

Burden of Proof in Actions on Negotiable Municipal Bonds.

The rule of law is well settled that when a plaintiff brings an action on a negotiable municipal bond or coupon he need only allege and prove the making of the instrument by the defendant. If the defendant claims that there is any illegality or fraud in connection with the instrument, the burden is on the defend-

ant to allege and prove such illegality or fraud. If such illegality or fraud be proved, then the burden is on the plaintiff to show that he paid value for the instrument. If the plaintiff proves the payment of value then the burden is on the defendant to show that the plaintiff had notice of the illegality or fraud.

Lexington vs. Butler, 14 Wall., 282.
Macon County vs. Shores, 97 U. S., 272.
Cromwell vs. Sac County, 96 U. S., 51.
Montclair vs. Ramsdell, 107 U. S., 147.

The plaintiff need not, however, wait for the proof to take this course, but he may in the first instance allege and prove that he paid value. Thereafter any evidence of illegality or fraud is inadmissible unless it is accompanied by proof or offer of proof of notice to the plaintiff of such illegality or fraud; and it is error for the court to admit any evidence establishing or tending to establish such illegality unless such evidence is accompanied by proof or offer of proof of notice to the plaintiff of such illegality.

This proposition has been expressly decided by this Court in the case of *County of Macon vs. Shores*, 97 U. S., 272. The complaint in that case alleged that the plaintiff was the holder of the coupons for value. The answer of the county set up fraud. The plaintiff filed a replication denying all the allegations of the answer. The plaintiff offered evidence to prove that he was a *bona fide* holder of the coupons for value and without notice. The county offered evidence to prove the alleged fraud and irregularities. The plaintiff objected. The objection was sustained and exception noted by the defendant. The Court, at the close of the testimony, instructed the jury that the evidence was insufficient to support the defense and the county excepted.

On writ of error, this Court considered the exceptions to the evidence and said (p. 277):

"The plaintiff had a right to prove that he was a *bona fide* holder of the coupons. The petition averred the fact. It was denied by the answer. It is true the presumption of law *prima facie* was that the plaintiff was such holder; but, if he chose to meet the issue by direct affirmative proof, it was clearly competent for him to do so. The testimony tending to show fraud and irregularities touching the issuing of the bonds and in disposing of them was properly rejected. The plaintiff being a *bona fide* holder of the coupons, it was incompetent to affect his rights."

The plaintiff in the present case proved that it is the owner of the coupons in question, and that it paid value therefor; and also proved that it acquired the same from a previous holder who had paid value therefor (Record, pp. 36–38). After this evidence the defendant undertook to introduce certain evidence which it claimed showed illegality in the issuance of the said bonds, but did not accompany such evidence with any proof of notice to plaintiff of such illegality, or any offer to prove such notice. The evidence which the defendant relied on to prove such illegality consisted of the so-called financial statements, and the warrants and list of warrants and the orders of the county court authorizing the issue of the bonds, and the defendant claimed that these were things of which the plaintiff had *constructive* notice; in other words, the defendant attempted to prove the illegality and the notice by the same facts, so that the question was presented to the trial court and the question was on the exceptions presented to the Circuit Court of Appeals whether these facts proved such illegality *and such constructive notice.* Standley had already testified that he had no *actual* notice of any facts which would render the

said bonds illegal (Record, p. 36), and no such notice was proved or offered to be proved. Hence under the decisions unless the so-called financial statements and the warrants and the orders of the county court authorizing the issue of the bonds are in and of themselves constructive notice to any and every *bona fide* holder of the bonds and sufficient to overcome the contrary, specific and positive recitals in the bonds, they were inadmissible as evidence.

No such course was taken here as was taken in the case of *First Unitarian Society vs. Faulkner*, 91 U. S., 415. 417, where evidence was admitted, "subject to the condition that the plaintiffs should subsequently prove" certain other facts which made the testimony competent. In the present case the offering in evidence of these financial statements and these warrants, &c., was not accompanied by any offer to prove or attempt to prove that the plaintiff had any actual notice of the same; on the contrary, it clearly appears from the bill of exceptions that these were offered in evidence with the idea that they were themselves constructive notice, and the charge of the court also states this fact, and shows conclusively the theory upon which they were offered and received in evidence.

Note that there was no offer to prove notice by any other testimony, but an attempt to prove constructive notice by the evidence, which was offered, and the Circuit Court held that this could be done even as *against the recitals* in the bonds, and as against the *bona fide* holder of such bonds.

The learned counsel for the county have attempted to make the point that the Circuit Court of Appeals had no right to say that the plaintiff was a *bona fide* holder of the coupons in question, but the Circuit Court

of Appeals was clearly correct in its position for the reasons stated in this brief, *supra*, p. 32.

So, also, the language of this court in the case of *Scotland County vs. Hill*, 112 U. S., 183, is specially pertinent. The court there says (p. 186):

"It is evident from the whole record that the court below proceeded on the theory that the decree in the Wagner suit could not conclude the plaintiff, and that consequently it was a matter of no importance whether he had notice of the pendency of the suit or not. In our opinion, the error began with the exclusion of the record in that suit. As notice of the pendency of the suit was, however, necessary to bind the plaintiff by the decree, proof of that fact was offered so that the question as to the effect of the decree upon this suit might be properly presented for review if deemed advisable."

So we say in the present case that the financial statements, the warrants and list of warrants and memoranda concerning the same, and the orders and proceedings of the county commissioners with regard to this issue of bonds, were all of them inadmissible as against the plaintiff, unless such proof were accompanied by proof or an offer to prove actual notice by the plaintiff of the alleged illegality in the bonds, and of the facts which were contained in the said evidence which was offered.

The defendant pleads, by way of defense, the alleged invalidity of the bonds from which the coupons sued on were taken, and also the alleged invalidity of the warrants in lieu of which they were issued. The presumption is in favor of the validity of all of these obligations, and the burden of proof is on defendant to show to the contrary; and to show that plaintiff had notice of such illegality.

If, on any state of facts, these bonds could lawfully have been issued, the court is bound, in favor of a bona fide holder, to presume the existence of such state of facts.

Inasmuch as these bonds recite that they are issued to refund "valid floating indebtedness," it must be presumed that such indebtedness was valid, if this can be done consistently with the constitution, the assessed valuation and what appears on the face of the bonds. The warrant indebtedness and the refunding bonds would all be valid if the same had been incurred before the completion of the assessment for the year 1881 (See *Lake County vs. Standley*, 49 Pac. Rep., 23, *supra*, p. 104). There was no evidence to show that, as a matter of fact, any of the indebtedness was incurred after that date; but, even if it had been incurred after that date, the fact that it *might* have been incurred before, and that the bond recited that it was issued to refund "valid floating indebtedness," is conclusive in favor of the *bona fide* holder. This rule, that, if on any state of facts the *bona fide* holder is entitled to recover, such facts must be presumed, is well settled by the decisions of this court.

In *City of Lexington vs. Butler*, 14 Wall., 282, this court, Mr. Justice CLIFFORD delivering the opinion, said (p. 296):

"Admitted, as it is, that the corporation defendants possessed the power to subscribe for the stock and to issue the bonds, it is clear that the plaintiff is entitled to recover upon the merits, as the repeated decisions of this court have established the rule that, when a corporation has power under any circumstances to issue negotiable securities, the *bona fide* holder has a right to presume that they were issued under the

circumstances which give the requisite authority, and that they are no more liable to be impeached for any infirmity in the hands of such a holder than any other commercial paper."

In *San Antonio vs. Mehaffy*, 96 U. S., 312, this court, Mr. Justice SWAYNE delivering the opinion, said (p. 314):

"The holder of commercial paper, in the absence of proof to the contrary, is presumed to have taken it underdue for a valuable consideration, and without notice of any objection to which it was liable (2 Pars. Bills and Notes, 9; *Pinkerton vs. Bailey*, 8 Wend. [N. Y.], 600).

"There is certainly nothing in the record which shows that such is not the position of the defendant in error.

"This shuts the door, as matter of law, to all inquiry touching the regularity of the proceedings of the officers charged with the duty of subscribing and making payment in the way prescribed. The rule in such cases is that if the municipality could have had the power under any circumstances to issue the securities, the *bona fide* holder has a right to presume that they were issued under the circumstances which give the authority, and they are no more liable to be impeached in his hands for any infirmity than any other commercial paper *(Supervisors vs. Schenck*, 5 Wall., 772; *San Antonio vs. Lane*, 32 Tex., 405)."

In *San Juan County vs. Oliver*, 7 Colo. App., 515, the Court said:

"The warrants directed the Treasurer of the county to pay to W. F. Graf or bearer the sums specified, 'for salary as County Treasurer,' out of money in the treasury not otherwise appropriated. If they are valid upon their face the presumption is that they were lawfully issued. This presumption could be overthrown only by positive evidence of their illegality, and the burden was upon the defendant to show the facts which invalidated them. They were received in evidence without objection, except that which goes to their form and contents."

In *State vs. Hannibal*, etc., 21 S. W. Rep., 14, the Supreme Court of Missouri said:

"We think, however, that Courts can presume that an act was done prior to a period after which it could not lawfully have been done. The Constitution which was adopted in 1875 took from the Legislature the power to authorize any township in the State to lend its aid to any corporation whatsoever, or to become a stockholder therein. Since the adoption of the Constitution these townships, or the counties in their behalf, have no authority to lend their credit to railroad companies, or to issue their bonds in furtherance of a purpose to do so. We must presume, then, that the bonded indebtedness of this township was created prior to the enactment of said Section 6799, and, therefore, the statute and the conditions and limitations therein provided for making levies to raise taxes to pay principal and interest on township aid bonds has no application to the bonds in question."

In *County of Clay vs. Society for Savings*, 104 U. S. 579, 586, the Court said:

"The second answer is, that if the county had under the law authority to issue bonds, and did issue them, and they went into circulation and came to the hands of a *bona fide* holder, he was not, in a suit upon them, required to aver or prove the performance of any of the requisites necessary to give them validity. The want of such performance is a matter of defense and the burden of proof is upon the county to establish it (*Lincoln vs. Iron Company*, 103 U. S., 412). In this case the county offered no evidence in any degree tending to show that the condition precedent upon the performance of which the issue was authorized had not been complied with. It cannot, therefore, assume that the conditions were not performed and insist on non-performance as a defense."

In *Lincoln vs. Iron Company*, 103 U. S., 412, 416, the Court said:

"Now, if the township could only make the donation alleged by way of an election duly held, it was the duty of the Court below to require proof of this fact as well

as of the other facts necessarily involved in the issue as made, and it will be presumed that this was done. What proof was sufficient for this purpose it is not necessary to decide, as no exception was taken on that point. But we do not think that there was any defect in the declaration to be cured. We think that it would have been good on demurrer. The township had authority by law to issue its bonds by way of donation to a railroad. It did issue its bonds. They got into circulation as commercial securities and were purchased by the plaintiff. All the plaintiff had to do in case of non-payment was simply to sue on the bonds. If there was any defense to them by reason of want of performance of any of the requisites necessary to give them validity, or for any other cause, it was for the defendant to show it. A bond, especially a negotiable bond, is a *prima facie* obligation of the obligor if he has capacity to make it, and is binding according to the terms and conditions apparent on its face until the contrary be shown. Whether an alleged defense, when set up, is or is not good against the particular holder, is to be determined by the Court in each case."

How has this defense been sustained? To determine this, it is well to first inquire as to the amount of indebtedness this county could lawfully have. It could have (1) all debts contracted before the adoption of the Constitution; (2) all debts contracted before the county had an assessed valuation of $1,000,000; (3) an additional debt, over these two items, at the rates specified in the Constitution Article XI., § 6.

No defense, then, is made out by this semi-annual statement, and hence the defendant was driven to rely on the record made by the Board as a preliminary to the issuance of the bonds. We have elsewhere shown that this was not a record intended or adapted to show the amount of bonds that would be issued. So that, even if a purchaser had seen these two records, he could not form any correct opinion as to the validity of any one of these bonds. He would see plainly that

bonds 9 to 13 were within the limit. He would see, also, that bonds 63 to 66 were within the limit of debt that could be contracted without a vote of the people, and he could see that, with such a vote, a debt could be contracted which would include 96 or 98. A purchaser cannot, in any view, be held to constructive notice of anything beyond what the record shows; and we submit, as a fair test of this notice, that this Court cannot adjudicate, from the face of these records, that any of these bonds are invalid. The only way in which the Court below could figure this out was to construe the record made by the Board as furnishing evidence to a purchaser that $175,000 of bonds were being issued, and then condemn them *all* because *some* of them were beyond the limit.

There was no proof as to when these bonds were actually issued and delivered. While they were all issued as of December 1, 1882, they were not all actually issued until, at different times, in 1883, and, possibly, some of them in 1884. There is no evidence as to what the assessed valuation of this county was in 1883 or 1884. It may have increased, and it will be presumed under the specific and positive recitals in the bonds, to have increased, to such an amount as to warrant the issuance of all these bonds. The debt on the bonds was not incurred until the bonds were issued, exchanged and delivered *Aspinwall vs. Daviess Co.*, 22 How., 364 ; *Francis vs. Howard Co.*, 50 Fed. Rep., 44 ; *Land, etc., vs. Davis Co.*, 6 Kan., 256 ; *Cumberland, etc., vs. Barren Co.*, 10 Bush., 604 ; *List vs. Wheeling*, 7 W. Va., 501.

In *Aspinwall vs. County of Daviess*, 22 How., 364, between the time of the vote of the people and the issuance of the bonds, the Constitution was changed so

as to prohibit their issuance. The Court held that the bonds were invalid on the ground that it was the *issuance* of the bonds, and not the vote of the people, that created the contract. A similar ruling was made in *Francis vs. Howard Co.*, 56 Fed. Rep., 44, and in *Land Grant Railway and Trust Co.*, 6 Kan., 256. The vote created no contract.

X.

In any view the bond issue is excessive only in part, and the burden is upon the defendant to prove that any particular bonds are invalid.

This precise proposition has been decided by the Supreme Court of Colorado in *Lake County vs. Standley*, 49 Pac. Rep., 23.

The first bonds received by Standley were numbered from 9 to 13, inclusive. These were clearly within the constitutional limitation and there was no attempt to show that the warrants exchanged for them were not valid. The Court below held that, if any of these funding bonds were excessive, they were *all void*. Upon this ruling the tenth assignment of error is predicated. This is not the law. We may, for the sake of the argument, concede that where an issue of bonds is made upon one contract, and by such issue the limitation is violated, the entire issue will be invalid. The reasons of this rule are stated in *Hedges vs. Dixon County*, 150 U. S., 182, and kindred cases. These adjudications proceed upon the principle that for a Court to enforce

payment of any of the bonds would be to make a new and different contract from that made by the issuance thereof.

This principle can have no application to these funding bonds. As we have seen, the funding act contemplates that these bonds are issued direct to the holders of warrants and in exchange therefor. They were not one entire issue. While they were all, for convenience, dated as of one date, they were signed and delivered, from time to time, as warrants came in for exchange. They were numbered as issued. The statute required this. There was no effort on the part of defendant, either in its pleadings or proof, to make any distinction between these bonds or the floating indebtedness which was funded by them. It proceeded upon the theory that the amount of warrants outstanding at the time the funding proceedings were commenced was excessive and that the bonds, no matter how long afterwards they were issued, were, therefore, excessive, and, consequently, that all the warrants and all the bonds were *void*. A more monstrous proposition was never announced in a Court of justice.

In the *Citizens' Bank vs. City of Terrell*, 78 Texas, 450, 460, the Court said:

"If the bonds were delivered at different dates, those first delivered, up to the amount of the debt that the City could lawfully create, should be paid, and the remainder of them should be treated as nullities *(Daviess County vs. Dickinson*, 117 U. S., 657*)*."

In *Catron vs. Lafayette County*, 106 Mo., 659, 668, the Court said:

"The five bonds sued on were sold, assigned and delivered to plaintiff for their face value in money by Hackett, on the 14th of January, 1867, so that at that

time the aggregate of the bonds ordered and issued by the County Court, including these sued on, amounted only to the sum of $5,500. It was doubtless the duty of the plaintiff when he purchased these bonds to ascertain whether they were within the limit of the power of the County Court, under the law, to issue them. But if, at the time they were issued and purchased, it was within the power of the Court to issue them, no subsequent improper issue of bonds could impair his rights under the bonds thus legally issued and purchased by him. The fact that the County Court, after he had paid his money for these bonds, and his rights under them had become fixed, issued other bonds for the same purpose, until finally they exceeded in the last issue, by a small sum, the aggregate amount which they were authorized to issue for such purpose, could in no way affect the integrity of these bonds of plaintiff, issued strictly within the limits of their power. The issue for the excess only would be void. The bonds issued and delivered before the limit of the power was reached are valid, and plaintiff's were of this number *(Daviess County vs. Dickinson*, 117 U. S., 657; *Stockdale vs. School District*, 47 Mich., 226; *McPherson vs. Foster*, 43 Iowa, 48*)*."

In *Culbertson vs. City of Fulton*, 127 Ill., 30, 38, the Court said:

"The indebtedness, however, can only be regarded as void to the extent of the amount of the excess over the constitutional limit. Up to and under that limit the indebtedness is valid. The inhibition operates upon the indebtedness and not upon the form of the debt. In the State of Iowa, which has a constitutional provision almost identical with that now under consideration, the officers of the school district made a contract to build a school house, for which the contractors were to receive $15,000 in bonds of the district, when the amount of the indebtedness which the district could lawfully contract was only $2,057.50. The Supreme Court of that State say: 'We have seen that for the excess over the prescribed limit no right of action exists against the district. The question now arises, is the district liable for the amount of indebtedness within the restricted limit? We think it is. As we have seen, the constitutional inhibition operates upon the indebtedness, not upon the form of

the debt. The district may become indebted to the amount of $2,057.50 by bonds. If the debt exceeds that amount, it is void as to the excess because of the inhibition upon the power of the district to exceed the limit, and the bonds as to the same excess are void because of the non-existence of a valid debt therefor. But this restriction does not extend to the sum of $2,057.50, for which the district had power to issue its bonds. That sum is a valid debt. The bonds to that extent are valid' (*McPherson vs. Foster Bros.*, 43 Iowa., 48; see, also, *Stockdale vs. Wayland School District*, 47 Mich., 226; *Mix vs. People*, 72 Ill., 241).'

In *Stockdale vs. Wayland School District*, 47 Mich., 226, the Court said (p. 664):

"There seems, however, to have been a statutory limit to the amount of bonds which the district might issue, and tl is was overlooked at the first meeting. The limit for districts having more than 100 and less than 200 children within the school ages—as this district had—is $3,000 (Public Acts 1877, page 169). The district was already bonded to the amount of $2,700, and if the vote had been limited to $300, it would have been valid. Having exceeded that sum, it is claimed to be void. In *McPherson vs. Foster*, 43 Iowa, 48, involving substantially the same question, tl e vote was held valid to the extent that would have been admissible had the limited sum been proposed and voted; and we agree in this view. See, also, Grand Gulf Bank vs. Archer, 8 Smedes & M., 151. The injunction should, therefore, have been restricted to the excess above $300."

In *Daviess County vs. Dickinson*, 117 U. S., 657, the Court said (p. 664):

"Then comes the question which of the bonds are valid and which invalid. We can have no doubt that the test is, which were first delivered, if that can be ascertained, and without regard to the classification of bonds according to times of payment in the order of the County Court; for, as the County Court was authorized to determine at what time the bonds should be payable, any one, taking a bond signed by the presiding Judge and the Clerk and bearing the seal of

the county, had the right to presume that it was valid, provided the County Court had not already issued bonds to the amount limited by the statute and by the vote."

In the case at bar, the *statute* did not limit the amount of bonds to be issued, neither did the vote do so. The vote simply authorized, but did not require, the Board to exchange bonds for warrants. The amount to be exchanged would necessarily be limited to the amount outstanding, but *need not reach that amount.* This would depend upon the warrant holders. Until they presented warrants and agreed to take bonds, there could be no bonds issued. And whenever a warrant holder presented his warrants and agreed to exchange them for bonds, then bonds were issued to make the exchange; and then, and then only, a distinct and separate contract was made by each transaction. Suppose that Mr. Standley's warrants were issued before the constitutional limitation became applicable to this county, and were, therefore, perfectly valid (and there is no evidence to the contrary), and the bonds he took for them were, also, on their face, and, as a matter of fact, within the limitation, can he be deprived of his property merely because the Board went on afterwards and exchanged other bonds beyond the limit for void warrants? Suppose this county had outstanding $100,000 of valid warrants and $75,000 of void warrants, and the holders of the valid warrants present them and get the first bonds up to $100,000, and the holders of the void warrants thereafter exchange *them* for bonds, can the county repudiate the entire issue, or, rather, the *first and valid issue?* We think not. The Court, however, held that notwithstanding Standley's warrants

were perfectly valid (for there was no attempt to show that they were not), and notwithstanding the bonds he received for the warrants were within the limitation, such bonds were invalid if the Board afterwards issued to other people, in exchange for other warrants, bonds which aggregated an amount exceeding the constitutional limitation. This cannot be the law.

By going back to the warrants and certain memoranda, the defendant attempted to prove that at the time these bonds exchanged with Standley were issued, there were others issued, amounting, in the aggregate, to $49,900. These bonds were issued to N. P. Seeley (Record, pp. 54, 55). In other words, Seeley had the warrants of Standley and other people in his possession for exchange, and, instead of having the bonds issued to the real parties who owned the warrants, he had them issued to himself or bearer, and then delivered them according to the ownership of the warrants; and, as there were, in one transaction, $49,900 of these bonds thus issued and delivered, it is sought to make this an issue to that amount, and thus vitiate bonds numbered from 9 to 13 inclusive. This effort proceeds upon the theory that this amount is itself beyond the limit, *but this is not true.* The pretended semi-annual statement put in evidence by the county shows an issue of $57,000 of warrants not affected by the constitutional limitation. Standley, even if he had known that all these bonds were issued at the same time his were, could not know, from any record in existence, but that they were all issued for valid indebtedness. By the list of warrants, Exhibit K (Record, p. 135), it appears that enough of these warrants were issued in 1881, before the valuation reached $1,000,000, and in 1882, before the limitation was reached, to more than

cover the first thirteen bonds which were issued, and, in the absence of any identification of Standley's warrants, the presumption would be that they were the valid ones. It is also a reasonable inference that the earlier bonds were issued for the earlier warrants.

XI.

Charge of the Court considered and shown to be fundamentally unsound.

We submit with due respect that an examination of this charge will show that not one correct legal principle was stated in it from beginning to end.

The first paragraph of the charge (which is made the ground of the seventh assignment of error) holds that there can be no estoppel, by any recital in the bond, against a defense based upon the constitutional provision limiting the indebtedness of a county. This was in direct conflict with the decision of this court in the case of *Chaffee County vs. Potter*, 142 U. S., 355.

The next paragraph of the charge (which was made the basis of the eighth assignment of error) practically declared that these bonds (issued to a certain payee or *bearer)* were not commercial paper, and that a purchaser must take notice of both the record made under the funding act and that made under the act of 1877, and assumed, without expressing it, that these records were valid notice, and sufficient to show the invalidity of the bonds. All of these rulings and assumptions have been elsewhere challenged in this brief and shown to be erroneous.

The next paragraph (which is the ground of the

ninth assignment of error) declared that the indebtedness incurred before the county had a valuation of $1,000,000 must be taken into consideration in determining whether a county, when its valuation reached $1,000,000, could incur *any* indebtedness. In other words, that its indebtedness could not exceed the constitutional limitation, *inclusive* of that contracted before such limitation became applicable to the county. This proposition is directly contrary to the constitution, which says, "*exclusive* of debts contracted before the adoption of this constitution." If this were law, this defendant and many of the counties in this state, at the time of reaching a valuation of $1,000,000, would have been utterly incapable of making a contract or issuing a valid warrant for any purpose. A reading of the plain and unambiguous provision of the Constitution in question will show that the counties of this State, when their assessed valuation for the first time reached $1,000,000, then and then only became subject to it, and could go on and incur indebtedness thereunder, within the limit, wholly irrespective of any debt contracted before the limitation became operative. The Court concludes this paragraph by holding that the semi-annual statements show that the increase of indebtedness in the years 1881 and 1882 was greatly in excess of the constitutional limit. This declaration was made (and could only have been made) chiefly on the statement of December 31, 1882, long *after* the bonds numbered from 9 to 13 had been issued and delivered. It will be remembered, also, that all of these bonds were issued as of December 1 1882. Mr. Standley bought the other five bonds in June, 1883, but they were dated as of December 1, 1882. Would *he* think of looking for a semi-annual statement made *after* the

date of his bonds? Will any Court hold that a purchaser, for cash, of these last five bonds, must take constructive notice of a record made a month *after* the bonds, on their face, purport to have been issued? We shall see. The statement of June 30, 1882, does not show an over-issue upon any correct view of the law. When we take into consideration the amount of debt that could be created, the amount of money in the treasury, and the amount of collectible delinquent taxes that may have been outstanding, every dollar of debt shown by this statement may have been valid, and the recital in the bonds be in accordance with the fact. The Court had to go into the realm of speculation and pure guesswork to say that any part of this debt was invalid. It must be borne in mind, further, that a warrant is but the evidence of a debt, and the debt itself, upon which many of these warrants were issued in 1882, may have been, and doubtless was, actually contracted in 1881, before the assessed valuation reached $1,000,000. There was no evidence to the contrary. Indeed, the defendant was not required to actually *prove* anything. This case and other cases were practically tried below on the theory that every presumption, reasonable or unreasonable, is to be indulged against a man who would put his cash into bonds of this kind. This is not the song the counties sing when they are trying to sell and exchange their bonds.

In the next paragraph (which is made the basis of the tenth assignment of error) the Court declared that "the rule established in the Courts is that if of a series of obligations issued there may be any of them void, the Court cannot distinguish between them." We have seen in another connection that this is not the law in regard to renewal bonds issued from time to

time to different people as warrants are presented for exchange. Courts will find some way to get nearer truth and justice in such a case than they would be in declaring *all such bonds* invalid. It would not be unreasonable to make the conclusive presumption in favor of a *bona fide* purchaser that the first bonds issued up to the limit of the Constitution represent the valid indebtedness and are, therefore, valid. If this presumption should not obtain, the burden should be on the defendant to show, as against any particular bond, that the warrants funded by it were invalid. If the defendant, in exchanging bonds for warrants, transacted the business in such a way as not to be able to know what particular warrants are represented by any particular bond, it is not *our fault*. The negligence of the defendant resulting in this confusion should not be rewarded by allowing it to repudiate *all of its valid* indebtedness merely because some bonds were issued for some invalid warrants. In the absence of evidence, the fair presumption is that the first issues of bonds were exchanged for the valid warrants. In legal theory, every bond was a separate and distinct issue. The funding act required the bonds to be numbered in the order in which they were issued and the name of the payee inserted therein, and hence every bond created a *separate and independent* contract. The contention spoken of in this paragraph was no contention of ours. We have always maintained, as we do now, that all warrants issued before the county had an assessed valuation of $1,000,000 were valid, and that when the county reached this valuation it could go on and incur a further indebtedness to the full limit of the Constitution. The other paragraphs of this charge we have considered under separate headings.

XII.

Validation by Constitutional Amendment.

In *Dudley vs. Lake County*, No. 177, now pending in this Court, are presented some views in regard to the force and effect of a constitutional amendment adopted in 1888. As this case is to be argued upon the same day as that, we do not deem it necessary to repeat or attempt to amplify what is there said on this subject.

JOHN F. DILLON,
HARRY HUBBARD,
JOHN M. DILLON,
EDMUND F. RICHARDSON,
Counsel for E. H. Rollins & Sons.

APPENDIX.

I.

Statute of Colorado approved February 21, 1881, under which the bonds in question were issued.

[*Session Laws Colorado, 1881, p. 85.*]

"An act to enable the several counties of the State to fund their floating indebtedness.

"SECTION 1. It shall be the duty of the County Commissioners of any county having a floating indebtedness exceeding $10,000, upon the petition of fifty of the electors of said county, who shall have paid taxes upon property assessed to them in said county in the preceding year, to publish, for the period of thirty days—in a newspaper published within said county—a notice requesting the holders of the warrants of such county to submit in writing to the Board of County Commissioners, within thirty days from date of the first publication of such notice, a statement of the amount of the warrants of such county, which they will exchange at par and accrued interest for the bonds of such county, to be issued under the provisions of this act, taking such bonds at par. It shall be the duty of such Board of County Commissioners, at the next general election occurring after the expiration of thirty days from the date of the first publication of the notice afore mentioned—upon the petition of fifty of the electors of such county who shall have paid taxes upon property assessed to them in said county in the preceding year, to submit to the vote of the qualified electors of such county, who shall have paid taxes on property assessed to them in said county in the preceding year—the question whether the Board of County Commissioners shall issue bonds of such county, under the provisions of this act, in exchange, at par, for the warrants of such county, issued prior to the date of the first publication of the aforesaid notice,

or they may submit such question at a special election, which they are hereby empowered to call for that purpose, at any time after the expiration of thirty days from the date of the first publication of the notice aforementioned, on the petition of fifty qualified electors as aforesaid, and they shall publish, for the period of at least thirty days immediately preceding such general or special election, in some newspaper published within such county, a notice that such question will be submitted to the duly qualified electors, as aforesaid, at such election. The County Treasurer of such county shall make out and cause to be delivered to the judges of election in each election precinct in the county, prior to the said election, a certified list of the taxpayers in such county who shall have paid taxes upon property assessed to them in such county in the preceding year, and no person shall vote upon the question of the funding of the county indebtedness unless his name shall appear upon such list, nor unless he shall have paid all county taxes assessed against him in such county in the preceding year. If a majority of the votes lawfully cast upon the question of such funding of the floating county indebtedness shall be for the funding of such indebtedness, the Board of County Commissioners may issue to any person or corporation holding any county warrant or warrants, issued prior to the date of the first publication of the aforementioned notice, coupon bonds of such county in exchange therefor, at par. No bonds shall be issued of less denomination than $100, and, if issued for a greater amount, then for some multiple of that sum, and the rate of interest shall not exceed eight per cent. per annum, the interest to be paid semi-annually, at the office of the County Treasurer, or in the city of New York, at the option of the holders thereof, such bonds to payable at the pleasure of the county, after ten years from the date of their istuance, but absolutely due and payable twenty years after date of issue. The whole amount of bonds issued under this act shall not exceed the sum of the county indebtedness at the date of the first publication of the aforementioned notice, and the amount shall be determined by the County Commissioners, and a certificate made of the same, and made a part of the records of the county; and any bond issued in excess of said sum shall be null and void, and all bonds issued under the provisions of this act shall be registered in

the office of the State Auditor, to whom a fee of ten cents shall be paid for recording each bond.

"SEC. 2. All bonds which may be issued under the provisions of this act shall be signed by the Chairman of the Board of County Commissioners, countersigned by the County Treasurer of the county, and attested by the Clerk of said county, and bear the seal of the county upon each bond, and shall be numbered and registered in a book kept for that purpose by the County Treasurer, in the order in which they are issued. Each bond shall state upon its face the amount for which the same issued, to whom issued, and the date of its issuance.

"SEC. 3. The County Commissioners shall be authorized to prescribe the form of such bonds, and the coupons thereto, and to provide for the half-yearly interest accruing on such bonds actually issued and delivered. They shall levy annually sufficient tax to fully discharge such interest, and for the ultimate redemption of such bonds they shall levy annually, after nine years from the date of such issuance, such tax upon all the taxable property in their county as shall create a yearly fund equal to ten (10) per cent. of the whole amount of such bonds issued, which fund shall be called the redemption fund. And all taxes for interest on and for the redemption of such bonds shall be paid in cash only, and shall be kept by the County Treasurer as a special fund, to be used in payment of interest on and for the redemption of such bonds only, and such taxes shall be levied and collected as other taxes.

"SEC. 4. It shall be the duty of the County Treasurer, when there are sufficient funds in his hands to the credit of the redemption fund, to pay in full the principal and interest of any such bonds, immediately to call in and pay as many of such bonds and accrued interest thereon as the funds on hand will liquidate as hereinbefore provided. Such bond or bonds shall be paid in the order of their number, and when any bonds or coupons issued under this act are taken up, it shall be the duty of such Treasurer to certify his action to the Board of County Commissioners, who shall cancel the same, so that they can be plainly identified, and cause a record to be made of the same. And when it is desired to redeem any of such bonds, the County Treasurer shall cause to be published for thirty days, in some newspaper at or nearest the county

seat of the county, and in a newspaper published in the city of Denver, a notice that certain county bonds by numbers and amounts will be paid upon presentation, and at the expiration of thirty days such bonds shall cease to bear interest.

"SEC. 5. All persons voting on the question as hereinbefore provided shall vote by separate ballot, which shall be deposited in a box to be used for that purpose only, and on which ballot shall be printed the words, 'For funding county debt,' or 'Against funding county debt.' And if, upon canvassing the vote (which shall be canvassed in the same manner as the vote for county officers), it shall appear that a majority of all the votes cast upon the question so submitted are for funding the county debt, then the County Commissioners shall be authorized to carry out the provisions of this act, and the Canvassing Board shall certify the vote, and it shall be made a part of the county records. The judges of election shall make and certify to the Clerk of the county a separate list of the names of the electors voting upon the question of the funding of the county indebtedness in the order in which the ballot of the elector so voting is received, and each ballot shall be numbered in the order in which it is received, and the number recorded on the said list of voters opposite the name of the voter who presents the ballot.

"SEC. 6. As soon as possible after such election, if the bonds shall be voted, the officers herein mentioned and authorized shall proceed to execute the provisions of this act.

"SEC. 7. All acts or parts of acts in conflict herewith are hereby repealed.

"SEC. 8. That inasmuch as several counties now have a large floating indebtedness and would be very much benefited by the immediate passage of this act, it is the opinion of this General Assembly that an emergency exists; therefore, this act shall be in force and take effect from and after its passage.

"Approved February 21, 1881."

II.

Extract from the Statute of Colorado Approved March 24, 1877.

[*Session Laws, Colorado, 1877, pp. 218, 227.*]

An act entitled "An act concerning counties, county officers and county government and repealing laws on these subjects," approved March 24, 1877, contained the following provision:

"SEC. 30. It shall be the duty of the Board of County Commissioners of each county to make out semi-annual statements at the regular sessions in January and July, at which times they shall have such statement published in some weekly newspaper published in the county, if there be such published; and, if there be no newspaper published in the county, such Commissioners shall cause such statements to be posted in three conspicuous places in said county, one of which shall be the Court House door; and such statement shall show the amount of debt owing by their county, in what the debt consists, what payments, if any, have been made upon the same, the rate of interest that such debts are drawing, also a detailed account of the receipts and expenditures of the county for the preceding months, in which shall be shown from what officer and on what account any money has been received, and the amounts, and to what individuals and on what account any money has been paid, and the amounts; and shall strike the balance, showing the amount deficit, if any, and the balance in the treasury, if any, and the *statement thus made, in addition to being published as before specified, shall also be entered of record* by the Clerk of the Board of County Commissioners in a book to be by him kept for that purpose only, which book shall be open to the inspection of the public at all times."

NOTE.—The above section 30 is carried into the General Laws Compliation of 1887 and numbered therein as Section 457 of such Compliation.

We have given an analysis of these pro-

visions of the said act of March 24, 1877, at page 79 of this brief, to which we call the special attention of this court.

III.

County debt limit provisions of Constitution of Colorado.

Section 6 of Article XI. of the Colorado State Constitution, as it stood prior to the amendment of 1888, was as follows (General Statutes, Colorado, 1883, p. 62):

"No county shall contract any debt by loan, in any form, except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges, and such indebtedness contracted in any one year shall not exceed the rates upon the taxable property in such county following, to wit: Counties in which the assessed valuation of taxable property shall exceed $5,000,000, $1.50 on each thousand thereof; counties in which such valuation shall be less than $5,000,000, $3 on each thousand dollars thereof. And the aggregate amount of indebtedness of any county for all purposes, *exclusive of debts contracted before the adoption of this Constitution*, shall not at any time exceed twice the amount above herein limited, unless when, in manner previded by law, the question of incurring such debt shall, at a general election, be submitted to such of the qualified electors of such county as in the year last preceding such election shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favor of incurring the debt; but the bonds, if any be issued therefor, shall not run less than ten years, and the aggregate amount of debt so contracted shall not at any time exceed twice the rate upon the valuation last herein mentioned: *Provided, That this sec-*

tion shall not apply to counties having a valuation of less than $1,000,000."

Section 6 of Article XI. of the Colorado State Constitution, as amended in A. D. 1888 (Mills' Annotated Statutes, Colorado, 1891, p. 326), is as follows:

"No county shall contract any debt by loan, in any form, except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges, and such indebtedness contracted in any one year shall not exceed the rates upon the taxable property in such county following, to wit: Counties in which the assessed valuation of taxable property shall exceed $5,000,000, $1.50 on each $1,000 thereof; counties in which such valuation shall be less than $5,000,000, $3 on each $1,000 thereof; and the aggregate amount of indebtedness of any county for all purposes, exclusive of debts contracted before the adoption of this Constitution, shall not at any time exceed twice the amount above herein limited, unless when, in manner provided by law, the question of incurring such debt shall, at a general election, be submitted to such of the qualified electors of such county as in the year last preceding such election shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favor of incurring the debt, but the bonds, if any be issued therefor, shall not run less than ten years, and the aggregate amount of debt so contracted shall not at any time exceed twice the rate upon the valuation last herein mentioned.

"*Provided, that any county in this State which has an indebtedness outstanding, either in the form of warrants issued for purposes provided by law, prior to December 31, A. D. 1886, or in the form of funding bonds issued prior to such date for such warrants previously outstanding, or in the form of public building, road or bridge bonds outstanding at such date, may contract a debt by loan by the issuance of bonds for the purpose of liquidating such indebtedness; Provided, The question of issuing said bonds shall, at a general or special election called for that purpose, be submitted to the vote of such of the duly qualified electors of such county as in the year last preceding such election shall have paid a tax upon property assessed in such county, and the majority of those*

voting thereon shall vote in favor of issuing the bonds. Such election shall be held in the manner prescribed by the laws of this State for the issuance of road, bridge and public building bonds, and the bonds authorized at such election shall be issued and provisions made for their redemption in the same manner as provided in said law."

The change made in 1888 consisted in leaving out the old provisos and adding the new ones, the said old and new provisos being quoted above in italic.

GUNNISON COUNTY COMMISSIONERS *v.* ROLLINS.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 178. Argued December 15, 16, 1898. — Decided February 20, 1899.

Although the bill of exceptions in this case does not state, in so many words, that it contains all the evidence, it sufficiently appears that it does contain all, and this court can inquire on this record whether the Circuit Court erred in giving a peremptory instruction for the defendant.

The recitals in the bonds of Gunnison County, the coupons of which are in suit in this case, that they were "issued by the Board of County Commissioners of said Gunnison County in exchange, at par, for valid floating indebtedness of the said county outstanding prior to September 2, 1882, under and by virtue of and in full conformity with the provisions of an act of the general assembly of the State of Colorado, entitled 'An act to enable the several counties of the State to fund their floating indebtedness,' approved February 21, 1881; 'that all the requirements of law have been fully complied with by the proper officers in the issuing of this bond;' that the total amount of the issue does not exceed the limit prescribed by the constitution of the State of Colorado, and that this issue of bonds has been authorized by a vote of a majority of the duly qualified electors of the said county of Gunnison, voting on the question at a general election duly held in said county on the seventh day of November, A.D. 1882," estop the county from asserting, against a *bona fide* holder for value, that the bond so issued created an indebtedness in excess of the limit prescribed by the constitution of Colorado.

This case is controlled by the judgment in *Chaffee County* v. *Potter*, 142 U. S. 355, which the court declines to overrule.

The plaintiff corporation was a *bona fide* holder, when this suit was brought, of some of the bonds sued for in it.

THE case is stated in the opinion.

Mr. John F. Dillon and *Mr. Edmund F. Richardson* for

Rollins. *Mr. Harry Hubbard* and *Mr. John M. Dillon* were on their brief.

Mr. Charles S. Thomas for Gunnison County Commissioners. *Mr. Thomas C. Brown*, *Mr. W. H. Bryant* and *Mr. H. H. Lee* were on his brief.

Mr. Justice Harlan delivered the opinion of the court.

This action was brought by E. H. Rollins & Sons, a corporation of New Hampshire, to obtain a judgment against the Board of Commissioners of Gunnison County, Colorado, a municipal corporation of that State, for the amount of certain coupons of bonds issued by the defendant in 1882. At the close of the evidence the defendant requested a peremptory instruction in its behalf. The Circuit Court charged the jury at some length, but concluded with a direction to find a verdict for the defendant, which was done, and a judgment in its favor was entered. That judgment was reversed in the Circuit Court of Appeals, and the case is here upon writ of certiorari. 49 U. S. App. 399.

The case made by the complaint is as follows:

By the laws of Colorado Boards of County Commissioners were authorized to examine, allow and settle all accounts against their respective counties, and to issue county warrants therefor; to build and keep in repair the county buildings, to insure the same, and to provide suitable rooms for county purposes; and to represent the county and have the care of county property and the management of the business and concerns of the county in all cases where the law did not otherwise provide.

On the 1st day of December, 1882, the defendant Board caused to be made and executed certain bonds acknowledging the county of Gunnison to be indebted and promising to pay to ——— or bearer the sum therein named, for value received, redeemable at the pleasure of the county after ten years, and absolutely due and payable twenty years after date, at the office of the county treasurer, with interest at eight per cent

per annum, payable semi-annually on the first days of March and September in each year at the county treasurer's office, or at the Chase National Bank in the city of New York, at the option of the holder, upon the presentation and surrender of the annexed coupons as they severally became due.

Each bond contained this recital: "This bond is issued by the Board of County Commissioners of said Gunnison County in exchange, at par, for valid floating indebtedness of the said county outstanding prior to September 2, 1882, under and by virtue of and in full conformity with the provisions of an act of the general assembly of the State of Colorado, entitled 'An act to enable the several counties of the State to fund their floating indebtedness,' approved February 21, 1881; and it is hereby certified that all the requirements of law have been fully complied with by the proper officers in the issuing of this bond. It is further certified that the total amount of this issue *does not exceed the limit prescribed by the constitution of the State of Colorado*, and that this issue of bonds has been authorized by a vote of a majority of the duly qualified electors of the said county of Gunnison, voting on the question at a general election duly held in said county on the seventh day of November, A. D. 1882. The bonds of this issue are comprised in three series, designated 'A,' 'B' and 'C' respectively, the bonds of series 'A' being for the sum of one thousand dollars each, those of series 'B' for the sum of five hundred dollars each and those of series 'C' for the sum of one hundred dollars each. This bond is one of series 'A.' The faith and credit of the county of Gunnison are hereby pledged for the punctual payment of the principal and interest of this bond."

To each bond were attached coupons for the semi-annual interest, signed by the county treasurer.

On the first day of December, 1882, for the bonds of the county with coupons attached as above specified, the defendant Board made an exchange with the parties then holding county warrants which before that time in accordance with the statutes in such case made and provided had been issued to them in settlement of claims presented by them against the county.

In every case when warrants were presented they were exchanged for the bonds of the county at par for their face and interest. In each case the blanks were filled out with the name of the party receiving the bonds or exchanging the warrants, and the blank for the place of payment filled in as the banking house of the Chase National Bank in the city of New York. Thereupon the bonds were signed by the chairman of the Board of County Commissioners, countersigned by the county treasurer and attested by the county clerk with the seal of the county; and the coupons attached were also filled out, stating the place of payment to be in the city of New York at the banking house of the Chase National Bank, and stating also the number of the funding bond and the series to which it was attached.

The issue of bonds as above set forth was authorized by a vote of the qualified electors to be exchanged for warrants, and the amount thereof was spread upon the records of the county as provided for by the act of February 21, 1881, entitled "An act to enable the several counties of the State to fund their floating indebtedness." In all other respects the terms and conditions of the act were fully complied with. The bonds were duly registered in the office of the auditor of the State.

In every case where bonds were issued and delivered to the payee or to any person for him, the parties received them in exchange for warrants, the amount of the bonds being the same as the amount of the warrants and interest thereon that had theretofore been issued by the county.

From the 1st day of December, 1882, and up until the 1st day of March, 1886, the county paid the interest on the bonds semi-annually in accordance with their terms and of the coupons attached to them.

The defendant Board made default in the payment of interest due on the first day of September, 1886, and made like default thereafter up to and including September 1, 1892.

The plaintiff was the holder and owner of coupons formerly attached to and belonging to certain bonds of the above issue. It asked judgment for the aggregate amount of the principal

of the coupons, with interest on the amount of each coupon as it became due.

The answer of the county contained a general denial of all the allegations of the complaint, and in addition set out eleven affirmative defences, which were chiefly based upon the alleged fact that the county, in issuing the bonds set forth in the complaint, had attempted to incur an indebtedness not authorized by the constitution of Colorado or by the statute referred to in the bonds.

The provision of the constitution of Colorado prescribing the extent to which counties may become indebted and to which the bonds referred, is as follows:

"No county shall contract any debt by loan in any form, except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges; and such indebtedness contracted in any one year shall not exceed the rates upon taxable property in such county, following, to wit: Counties in which the assessed valuation of taxable property shall exceed five millons of dollars, one dollar and fifty cents on each thousand dollars thereof. Counties in which such valuation shall be less than five millions of dollars, three dollars on each thousand dollars thereof. And the aggregate amount of indebtedness of any county for all purposes, exclusive of debts contracted before the adoption of this constitution, shall not at any time exceed twice the amount above herein limited, unless when in manner provided by law, the question of incurring debt shall, at a general election, be submitted to such of the qualified electors of such county as in the year last preceding such election shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favor of incurring the debt; but the bonds, if any be issued therefor, shall not run less than ten years, and the aggregate amount of debt so contracted shall not at any time exceed twice the rate upon the valuation last herein mentioned; provided that this section shall not apply to counties having a valuation of less than one million of dollars." Laws of Colorado, 1877, p. 62.

The act of February 21, 1881, referred to in the bonds in question, contains among other provisions the following:

"§ 1. It shall be the duty of the county commissioners of any county having a floating indebtedness exceeding ten thousand dollars, upon the petition of fifty of the electors of said counties [county] who shall have paid taxes upon property assessed to them in said county in the preceding year, to publish for the period of thirty days, in a newspaper published within said county, a notice requesting the holders of the warrants of such county to submit, in writing, to the board of county commissioners, within thirty days from the date of the first publication of such notice, a statement of the amount of the warrants of such county, which they will exchange at par, and accrued interest, for the bonds of such county, to be issued under the provisions of this act, taking such bonds at par. It shall be the duty of such board of county commissioners at the next general election occurring after the expiration of thirty days from the date of the first publication of the notice aforementioned, upon the petition of fifty of the electors of such county who shall have paid taxes upon property assessed to them in said county in the preceding year, to submit to the vote of the qualified electors of such county who shall have paid taxes on property assessed to them in said county in the preceding year, the question whether the board of county commissioners shall issue bonds of such county under the provisions of this act, in exchange at par for the warrants of such county issued prior to the date of the first publication of the aforesaid notice; or they may submit such question at a special election, which they are hereby empowered to call for that purpose at any time after the expiration of thirty days from the date of the first publication of the notice aforementioned, on the petition of fifty qualified electors as aforesaid; and they shall publish for the period of at least thirty days immediately preceding such general or special election in some newspaper published within such county, a notice that such question will be submitted to the duly qualified electors as aforesaid, at such election. The county treasurer of such county shall make out and cause to be delivered to the judges

of election in each election precinct in the county, prior to the said election, a certified list of the taxpayers in such county who shall have paid taxes upon property assessed to them in such county in the preceding year; and no person shall vote upon the question of the funding of the county indebtedness, unless his name shall appear upon such list, nor unless he shall have paid all county taxes assessed against him in such county in the preceding year. If a majority of the votes lawfully cast upon the question of such funding of the floating county indebtedness shall be for the funding of such indebtedness, the board of county commissioners may issue to any person or corporation holding any county warrant or warrants, issued prior to the date of the first publication of the aforementioned notice, coupon bonds of such county in exchange therefor, at par. No bonds shall be issued of less denomination than one hundred dollars, and if issued for a greater amount, then for some multiple of that sum, and the rate of interest shall not exceed eight per cent per annum. The interest to be paid semi-annually at the office of the county treasurer, or in the city of New York, at the option of the holders thereof. Such bonds to be payable at the pleasure of the county after ten years from the date of their issuance, but absolutely due and payable twenty years after date of issue. The whole amount of bonds issued under this act shall not exceed the sum of the county indebtedness at the date of the first publication of the aforementioned notice, and the amount shall be determined by the county commissioners, and a certificate made of the same, and made a part of the records of the county; and any bond issued in excess of said sum shall be null and void; and all bonds issued under the provisions of this act shall be registered in the office of the state auditor, to whom a fee of ten cents shall be paid for recording each bond." Laws of Colorado, 1881, pp. 85, 86, 87.

1. The Circuit Court of Appeals held that the bill of exceptions did not purport to contain all the evidence adduced at the trial, and for that reason it did not consider the question whether error was committed in directing the jury to find for the defendant. We are of opinion that the bill of exceptions

should be taken as containing all the evidence. It appears that as soon as the jury was sworn to try the issues in the cause, "the complainants to sustain the issues on their part offered the following oral and documentary evidence." Then follow many pages of testimony on the part of the plaintiffs, when this entry appears: "Whereupon complainants rested." Immediately after comes this entry: "Thereupon the defendants to sustain the issues herein joined on their part, produced the following evidence." Then follow many pages of evidence given on behalf of the defendant, and the evidence of a witness recalled by the defendant, concluding with this entry: "Whereupon the further proceedings herein were continued until the 20th day of May, 1896, at 10 o'clock A.M." Immediately following is this entry: "Wednesday, May 20th, at 10 o'clock, the further trial of this cause was continued as follows." The transcript next shows some discussion by counsel as to the exclusion of particular evidence, after which is this entry: "Thereupon counsel for defendant made a formal motion under the evidence on both sides that the court instruct the jury to return a verdict for the defendant." Although the bill of exceptions does not state, in words, that it contains all the evidence, the above entries sufficiently show that it does contain all the evidence. It is therefore proper to inquire on this record whether the Circuit Court erred in giving a peremptory instruction for the defendant.

2. We have seen that the bonds to which were attached the coupons in suit recited that they were issued by the Board of County Commissioners "in exchange at par for valid floating indebtedness of the county outstanding prior to September 2, 1882, under and by virtue of and in full conformity with the provisions of an act of the General Assembly of the State of Colorado, entitled 'An act to enable the several counties of the State to fund their floating indebtedness,' approved February 21, 1881;" that "all the requirements of law have been fully complied with by the proper officers in the issuing of this bond;" that the total amount of the issue did "not exceed the limit prescribed by the constitution of the State of Colorado;" and that such issue had been authorized by a vote

of a majority of the duly qualified electors of the county, voting on the question at a general election duly held in the county on the 7th day of November, 1882.

Do such recitals estop the county from asserting against a *bona fide* holder for value that the bonds so issued created an indebtedness in excess of the limit prescribed by the constitution of Colorado? An answer to this question can be found in former decisions of this court. It is necessary to advert to those decisions, particularly those in which the court considered the effect of recitals importing compliance with constitutional provisions.

In *Buchanan* v. *Litchfield*, 102 U. S. 278, 290, 292, which was a suit on interest coupons of municipal bonds, the defence was made that the bonds were issued in violation of that clause of the constitution of the State providing that "no county, city, township, school district or other municipal corporation shall be allowed to become indebted in any manner or for any purpose to an amount including existing indebtedness in the aggregate exceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness." This court said: "As, therefore, neither the constitution nor the statute prescribed any rule or test by which persons contracting with municipal corporations should ascertain the extent of their 'existing indebtedness,' it would seem that if the bonds in question had contained recitals which, upon any fair construction, amounted to a representation upon the part of the constituted authorities of the city that the requirements of the constitution were met — that is, that the city's indebtedness, increased by the amount of the bonds in question, was within the constitutional limit — then the city, under the decisions of this court, might have been estopped from disputing the truth of such representations as against a *bona fide* holder of its bonds. The case might then, perhaps, have been brought within the rule announced by this court in *Town of Coloma* v. *Eaves*, 92 U. S. 484, in which case we said, and now repeat, that 'where legislative authority has been given to a municipality, or to its officers, to subscribe for the

stock of a railroad company, and to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the legislative enactment that the officers of the municipality were invested with power to decide whether the condition precedent has been complied with, their recital that it has been, made on the bonds issued by them and held by a *bona fide* purchaser, is conclusive of the fact, and binding upon the municipality; for the recital is itself a decision of the fact by the appointed tribunal.' So, in the more recent case of *Orleans* v. *Pratt*, 99 U. S. 676, it was said that 'where the bonds on their face recite the circumstances which bring them within the power, the corporation is estopped to deny the truth of the recital.'" Again: "A recital that the bonds were issued under the authority of the statute and in pursuance of the city ordinance, did not necessarily import a compliance with the constitution. Had the bonds made the additional recital that they were issued in accordance with the constitution, or had the ordinance stated, in any form, that the proposed indebtedness was within the constitutional limit, or had the statute restricted the exercise of the authority therein conferred to those municipal corporations whose indebtedness did not, at the time, exceed the constitutional limit, there would have been ground for holding that the city could not, as against the plaintiff, dispute the fair inference to be drawn from such recital or statement as to the extent of its existing indebtedness."

In *Northern Bank of Toledo* v. *Porter Township*, 110 U. S. 608, 616, 619, which was an action on municipal bonds, and involved a question respecting the conclusiveness as between the municipality and a *bona fide* holder for value of recitals in the bonds that they had been issued in conformity to law, the court referred to the above rule established in *Town of Coloma* v. *Eaves*, and said: "We are of opinion that the rule as thus stated does not support the position which counsel for plaintiff in error take in the present case. The adjudged cases, examined in the light of their special circumstances, show that the facts which a municipal corporation, issuing bonds in aid of the construction of a railroad, was not permitted, against a

bona fide holder, to question, in face of a recital in the bonds of their existence, were those connected with or growing out of the discharge of the ordinary duties of such of its officers as were invested with authority to execute them, and which the statute conferring the power made it their duty to ascertain and determine before the bonds were issued; not merely for themselves, as the ground of their own action, but, equally, as authentic and final evidence of their existence, for the information and action of all others dealing with them in reference to it. . . . The question of legislative authority in a municipal corporation to issue bonds in aid of a railroad company cannot be concluded by mere recitals; but the power existing, the municipality may be estopped by recitals to prove irregularities in the exercise of that power; or, when the law prescribes conditions upon the exercise of the power granted, and commits to the officers of such municipality the determination of the question whether those conditions have been performed, the corporation will also be estopped by recitals which import such performance."

A leading case on this subject is *Dixon County* v. *Field*, 111 U. S. 83, 92–94, which involved the validity of bonds issued in the name of Dixon County, Nebraska, the constitution of which State prescribed conditions upon which donations could be made to a railroad or other work of internal improvement by cities, towns, precincts, municipalities or other subdivisions of the State, and imposed limitations upon the amount thereof and upon the mode of creating municipal debts of that kind. The principal question was as to the conclusiveness of certain recitals in the bonds sued on in that case. This court said: "The estoppel does not arise, except upon matters of fact which the corporate officers had authority by law to determine and to certify. It is not necessary, it is true, that the recital should enumerate each particular fact essential to the existence of the obligation. A general statement that the bonds have been issued in conformity with the law will suffice, so as to embrace every fact which the officers making the statement are authorized to determine and certify. A determination and statement as to the whole series, where more than one is

involved, is a determination and certificate as to each essential particular. But it still remains that there must be authority vested in the officers, by law, as to each necessary fact, whether enumerated or non-enumerated, to ascertain and determine its existence, and to guarantee to those dealing with them the truth and conclusiveness of their admissions. In such a case the meaning of the law granting power to issue bonds is, that they may be issued, not upon the existence of certain facts, to be ascertained and determined whenever disputed, but upon the ascertainment and determination of their existence, by the officers or body designated by law to issue the bonds upon such a contingency. This becomes very plain when we suppose the case of such a power granted to issue bonds, upon the existence of a state of facts to be ascertained and determined by some persons or tribunal other than those authorized to issue the bonds. In that case, it would not be contended that a recital of the facts in the instrument itself, contrary to the finding of those charged by law with that duty, would have any legal effect. So, if the fact necessary to the existence of the authority was by law to be ascertained, not officially by the officers charged with the execution of the power, but by reference to some express and definite record of a public character, then the true meaning of the law would be, that the authority to act at all depended upon the actual objective existence of the requisite fact, as shown by the record, and not upon its ascertainment and determination by any one; and the consequence would necessarily follow, that all persons claiming under the exercise of such a power might be put to proof of the fact, made a condition of its lawfulness, notwithstanding any recitals in that instrument. This principle is the essence of the rule declared upon this point, by this court, in the well-considered words of Mr. Justice Strong, in *Coloma* v. *Eaves*, 92 U. S. 484, where he states (p. 491) that it is, 'where it may be gathered from the legislative enactment that the officers of the municipality were invested with the power to decide whether the condition precedent has been complied with,' that 'their recital that it has been, made in the bonds issued by them and held by a *bona fide* purchaser, is conclu-

sive of the fact, and binding upon the municipality; for the recital is itself a decision of the fact by the appointed tribunal.' The converse is embraced in the proposition and is equally true. If the officers authorized to issue bonds, upon a condition, are not the appointed tribunals to decide the fact, which constitutes the condition, their recital will not be accepted as a substitute for proof. In other words, where the validity of the bonds depends upon an estoppel, claimed to arise upon the recitals of the instrument, the question being as to the existence of power to issue them, it is necessary to establish that the officers executing the bonds had lawful authority to make the recitals and to make them conclusive. The very ground of the estoppel is that the recitals are the official statements of those to whom the law refers the public for authentic and final information on the subject."

In *Lake County* v. *Graham*, 130 U. S. 674, 680, 683–684, the question was as to the validity of certain bonds issued by Lake County, Colorado, under the very statute of that State referred to in the bonds the coupons of which are here in suit, namely, the above act of February 21, 1881, authorizing the several counties of the State to fund their floating indebtedness. It was recited in each of the bonds sued on in that case that they were issued under and by virtue of and in full compliance with that act, and that "all the provisions and requirements of said act have been fully complied with by the proper officers in the issuing of this bond." No one of the bonds, let it be observed, contained any recital that it was issued in conformity to the provisions of the state constitution. This court said: "Nothing is better settled than this rule — that the purchaser of bonds, such as these, is held to know the constitutional provisions and the statutory restrictions bearing on the question of the authority to issue them; also the recitals of the bonds he buys; while, on the other hand, if he act in good faith and pay value, he is entitled to the protection of such recitals of facts as the bonds may contain. In this case the constitution charges each purchaser with knowledge of the fact that, as to all counties whose assessed valuation equals one million of dollars, there is a

maximum limit beyond which those counties can incur no further indebtedness under any possible conditions, provided, that in calculating that limit, debts contracted before the adoption of the constitution are not to be counted. The statute, on the other hand, charges the purchaser with knowledge of the fact that the county commissioners were to issue bonds, at par, in exchange for such warrants of the county as were themselves issued prior to the date of the first publication of the notice provided for; that the only limitation on the issue of bonds in the statute was, that the bonds should not exceed in amount the sum of the county indebtedness on the day of notice aforesaid; that while the commissioners were empowered to determine the amount of such indebtedness, yet the statute does not refer that board, for the elements of its computation, to the constitution or to the standards prescribed by the constitution, but leaves it open to them, without departing from any direction of the statute, to adopt solely the basis of the county warrants. The recitals of the bonds were merely to the effect that the issue was 'under, and by virtue of, and in full compliance with,' the *statute;* 'that all the provisions and requirements *of said act* have been fully complied with by the proper officers in the issuing of this bond;' and that the issuing was 'authorized by a vote of a majority of the duly qualified electors,' etc.; no express reference being made to the constitution, nor any statement made that the constitutional requirements had been observed. There is, therefore, no estoppel as to the *constitutional* question, *because there is no recital in regard to it. Carroll County* v. *Smith*, 111 U. S. 556." In disposing of the contention that, under the doctrines of certain adjudged cases, the county was estopped to deny that the bonds were issued in conformity to the constitution, the court said: "The question here is distinguishable from that in the cases relied on by counsel for defendant in error. In this case the standard of validity is created by the constitution. In that standard two factors are to be considered; one the amount of assessed value, and the other the ratio between that assessed value and the debt proposed. These being exactions of the constitution itself,

it is not within the power of a legislature to dispense with them, either directly or indirectly, by the creation of a ministerial commission whose finding shall be taken in lieu of the facts. In the case of *Sherman County* v. *Simons*, 109 U. S. 735, and others like it, the question was one of estoppel as against an exaction imposed by the legislature; and the holding was, that the legislature, being the source of exaction, had created a board authorized to determine whether its action had been complied with, and that its finding was conclusive to a *bona fide* purchaser. So also in *Oregon* v. *Jennings*, 119 U. S. 74, the condition violated was not one imposed by the constitution, but one fixed by the subscription contract of the people."

This brings us in our reference to the authorities to the important case of *Chaffee County* v. *Potter*, 142 U. S. 355, 363, 364, 366. That was an action upon coupons of bonds issued by Chaffee County, Colorado, under the act of February 21, 1881, under which the bonds here in suit were issued. The bonds and coupons were in the same form and contained the *same recitals* as the above bonds issued by Gunnison County, and were of like date. The defence in part in the *Chaffee County case* was that the bonds, and each of them, were issued in violation of the constitution of the State. After referring to the decision in *Lake County* v. *Graham* (the bonds in which did not contain any express recitals as to the constitutional limit of indebtedness), and stating that it was based largely on the ruling in *Dixon County* v. *Field*, this court said: "To the views expressed in that case we still adhere; and the only question for us now to consider, therefore, is: Do the additional recitals in these bonds, above set out, and in the absence from their face of anything showing the total number issued of each series, and the total amount in all, estop the county from pleading the constitutional limitation? In our opinion these two features are of vital importance in distinguishing this case from *Lake County* v. *Graham* and *Dixon County* v. *Field*, and *are sufficient to operate as an estoppel against the county.* Of course, the purchaser of bonds in open market was bound to take notice of

the constitutional limitation on the county with respect to indebtedness which it might incur. But when, upon the face of the bonds, there was any express recital that the limitation had not been passed, and the bonds themselves did not show that it had, he was bound to look no further. An examination of any particular bond would not disclose, as it would in the *Lake County case*, and in *Dixon County* v. *Field*, that, as a matter of fact, the constitutional limitation had been exceeded, in the issue of the series of bonds. The purchaser might even know, indeed it may be admitted that he would be required to know, the assessed valuation of the taxable property of the county, and yet he could not ascertain by reference to one of the bonds and the assessment roll whether the county had exceeded its power, under the constitution, in the premises. True, if a purchaser had seen the whole issue of each series of bonds and then compared it with the assessment roll, he might have been able to discover whether the issue exceeded the amount of indebtedness limited by the constitution. But that is not the test to apply to a transaction of this nature. It is not supposed that any one person would purchase all of the bonds at one time, as that is not the usual course of business of this kind. The test is — What does each individual bond disclose? If the face of one of the bonds had disclosed that, as a matter of fact, the recital in it, with respect to the constitutional limitation, was false, of course the county would not be bound by that recital, and would not be estopped from pleading the invalidity of the bonds in this particular. Such was the case in *Lake County* v. *Graham* and *Dixon County* v. *Field*. But that is not this case. Here, by virtue of the statute under which the bonds were issued, *the county commissioners were to determine the amount to be issued*, which was not to exceed the total amount of the indebtedness at the date of the first publication of the notice requesting the holders of county warrants to exchange their warrants for bonds, at par. The statute, in terms, gave to the commissioners the determination of a fact, that is, whether the issue of bonds was in accordance with the constitution of the State and the statute under which they

were issued, and required them to spread a certificate of that determination upon the records of the county. The recital in the bond to the effect that such determination has been made, and *that the constitutional limitation had not been exceeded in the issue of the bonds, taken in connection with the fact that the bonds themselves did not show such recital to be untrue*, under the law, *estops the county from saying that it is untrue. Town of Coloma* v. *Eaves*, 92 U. S. 484; *Town of Venice* v. *Murdock*, 92 U. S. 494; *Marcy* v. *Township of Oswego*, 92 U. S. 637; *Wilson* v. *Salamanca*, 99 U. S. 499; *Buchanan* v. *Litchfield*, 102 U. S. 278; *Northern Bank* v. *Porter Township*, 110 U. S. 608." After referring to what was said in *Town of Coloma* v. *Eaves* and *Buchanan* v. *Litchfield*, the court thus concludes its opinion: "We think this case comes fairly within the principles of those just cited; and that it is not governed by *Dixon County* v. *Field* and *Lake County* v. *Graham*, but is distinguishable from them in the essential particulars above noted."

It is contended that the present case is controlled by *Sutliff* v. *Lake County Commissioners*, 147 U. S. 230, 235, 237–8, rather than by *Chaffee County* v. *Potter*. The action in the *Sutliff case* was upon coupons of bonds issued by a county of Colorado, each bond reciting that it was issued under and by virtue of and in compliance with the act of assembly entitled "An act concerning counties, county officers and county government, and repealing laws on these subjects," approved March 24, 1877, and it was certified in each bond that "all the provisions of said act have been fully complied with by the proper officers in the issuing of this bond." It was a vital fact in that case that there was no recital in the bonds that the indebtedness thus created was not in excess of the constitutional limit. Still the defence was that the bonds in fact increased the indebtedness of the county to an amount in excess of the limit prescribed by the state constitution and therefore were illegal and void. The court, upon the facts certified and in the light of previous decisions, held it to be clear that "the plaintiff, although a purchaser for value and before maturity of the bonds, was charged with the duty

of examining the records of indebtedness provided for in the statute of Colorado, in order to ascertain whether the bonds increased the indebtedness of the county beyond the constitutional limit; and that the recitals in the bonds did not estop the county to prove by the records of the assessment and the indebtedness that the bonds were issued in violation of the constitution. In those cases," it continued, "in which this court has held a municipal corporation to be estopped by recitals in its bonds to assert that they were issued in excess of the limit imposed by the constitution or statutes of the State, the statutes, as construed by the court, left it to the officers issuing the bonds to determine whether the facts existed which constituted the statutory or constitutional condition precedent, and did not require those facts to be made a matter of public record. *Marcy* v. *Oswego*, 92 U. S. 637; *Humboldt* v. *Long*, 92 U. S. 642; *Dixon County* v. *Field*, 111 U. S. 83; *Lake County* v. *Graham*, 130 U. S. 674, 682; *Chaffee County* v. *Potter*, 142 U. S. 355, 363. But if the statute expressly requires those facts to be made a matter of public record, open to the inspection of every one, there can be no implication that it was intended to leave that matter to be determined and concluded, contrary to the facts so recorded, by the officers charged with the duty of issuing the bonds." After referring to *Dixon County* v. *Field*, above cited, the court proceeded to show the precise grounds upon which the decisions in *Lake County* v. *Graham* and *Chaffee County* v. *Potter* were rested: "That decision [*Dixon County* v. *Field*] and the ground upon which it rests were approved and affirmed in *Lake County* v. *Graham* and *Chaffee County* v. *Potter*, above cited, each of which arose under the article of the constitution of Colorado now in question, but under a different statute, which did not require the amount of indebtedness of the county to be stated on its records. In *Lake County* v. *Graham*, each bond showed on its face the whole amount of bonds issued, and the recorded valuation of property showed that amount to be in excess of the constitutional limit; and for this reason, as well as because the bonds contained no recital upon that point, the county was held not to

be estopped to plead that limit. 130 U. S. 682, 683. In *Chaffee County* v. *Potter*, on the other hand, the bonds contained an express recital *that the total amount of the issue did not exceed the constitutional limit*, and did not show on their face the amount of the issue, and the county records showed only the valuation of property, so that, as observed by Mr. Justice Lamar in delivering judgment: 'The purchaser might even know, indeed it may be admitted that he would be required to know, the assessed valuation of the taxable property of the county, and yet he could not ascertain by reference to one of the bonds and the assessment roll whether the county had exceeded its power, under the constitution, in the premises.' 142 U. S. 363. The case at bar does not fall within *Chaffee County* v. *Potter*, and cannot be distinguished in principle from *Dixon County* v. *Field* or from *Lake County* v. *Graham*. The only difference worthy of notice is that in each of these cases the single fact required to be shown by the public record was the valuation of the property of the county, whereas here two facts are to be so shown, the valuation of the property, and the amount of the county debt. But, as both these facts are equally required by the statute to be entered on the public records of the county, they are both facts of which all the world is bound to take notice, and as to which, therefore, the county cannot be concluded by any recitals in the bonds."

It thus appears that in the *Sutliff case* the court neither modified, nor intended to modify, but distinctly recognized, the principle announced in *Chaffee County* v. *Potter*, namely, that the recital in the bonds that the debt thereby created did not exceed the limit prescribed by the constitution estopped the county from asserting, as against a *bona fide* holder for value, that the contrary was the fact.

We have made this extended reference to adjudged cases because of the wide difference among learned counsel as to the effect of our former decisions. This course has also been pursued in order to bring out clearly the fact that the present case is controlled by the judgment in *Chaffee County* v. *Potter*. The views of the Circuit Court, as expressed in its charge in

this case and as enforced by its peremptory instruction to find for the defendant, cannot be approved without overruling that case. It was expressly decided in the *Chaffee County case* that the statute under which the bonds there in suit (the bonds here in suit being of the same class) authorized the County Commissioners to determine whether the proposed issue of bonds would in fact exceed the limit prescribed by the constitution and the statute; and that the recital in the bond to the effect that such determination had been made and that the constitutional limitation had not been exceeded, taken in connection with the fact that the bonds themselves did not show such recital to be untrue, estopped the county, under the law, from saying that the recital was not true. We decline to overrule *Chaffee County* v. *Potter*, and upon the authority of that case, and without reëxamining or enlarging upon the grounds upon which the decision therein proceeded, we adjudge that as against the plaintiff the county of Gunnison is estopped to question the recital in the bonds in question to the effect that they did not create a debt in excess of the constitutional limit and were issued by virtue of and in conformity with the statute of 1881 and in full compliance with the requirements of law.

We have assumed thus far that the plaintiff corporation was a *bona fide* purchaser or holder of the bonds to which the coupons in suit were attached. Upon this question we concur in the views expressed by the Circuit Court of Appeals. Speaking by Judge Thayer, that court said: "The testimony contained in the present record shows, we think, without contradiction that the plaintiff was a *bona fide* holder when the suit was brought of at least five of the bonds which are involved in the present controversy, because it holds the title of Joseph Stanley, who was himself an innocent purchaser of said bonds before maturity, for the price of ninety-eight cents on the dollar. The rights which Stanley acquired by virtue of such purchase inure to the plaintiff, by virtue of its purchase of the bonds from Stanley in June, 1892, and this without reference to any knowledge which the plaintiff may have had at the latter date affecting the validity of the secu-

rities. A *bona fide* holder of commercial paper is entitled to transfer to a third party all the rights with which he is vested, and the title so acquired by his indorsee cannot be affected by proof that the indorsee was acquainted with the defences existing against the paper. *Commissioners of Marion County* v. *Clark*, 94 U. S. 278, 286; *Hill* v. *Scotland County*, 34 Fed. Rep. 208; Daniel on Negotiable Instruments, (4th ed.,) § 803, and cases there cited." 49 U. S. App. 399, 413.

The remaining five bonds owned by the plaintiff corporation were also purchased from Stanley, who received them directly from the county in exchange for warrants that he owned and held. There is no reason why upon the surrender of county warrants for county bonds he was not entitled to the benefit of the rule above declared as to the conclusiveness of the recital in the bonds, or why he may not be regarded as much an innocent holder of the bonds exchanged for county warrants as of the other bonds purchased by him in open market. There is no proof that at the time of such exchange he had or was chargeable with knowledge or notice that the debt created by the bonds exceeded the constitutional limit; consequently, in taking the bonds in exchange he was entitled, for the reasons heretofore given, to rely upon the truth of the recitals contained in them. When the Board of County Commissioners, proceeding under the act of 1881, offered to exchange county bonds for the warrants held by him, he was entitled under the circumstances disclosed to assume it to be true as recited in the bonds that the constitutional limit was not being exceeded.

It is insisted with much earnestness that the principles we have announced render it impossible for a State by a constitutional provision to guard against excessive municipal indebtedness. By no means. If a state constitution, in fixing a limit for indebtedness of that character, should prescribe a definite rule or test for determining whether that limit has already been exceeded or is being exceeded by any particular issue of bonds, all who purchase such bonds would do so subject to that rule or test, whatever might be the hardship in the case of those who purchased them in the open market

in good faith. Indeed, it is entirely competent for a State to provide by statute that all obligations, in whatever form executed by a municipality existing under its laws, shall be subject to any defence that would be allowed in cases of non-negotiable instruments. But for reasons that every one understands no such statutes have been passed. Municipal obligations executed under such a statute could not be readily disposed of to those who invest in such securities.

It follows that the Circuit Court erred in directing the jury to return a verdict for the defendant.

What has been said renders it unnecessary to consider various questions arising upon exceptions to specific rulings in the Circuit Court as to the admission and exclusion of evidence, and as to those parts of the charge to which objections were made. Those rulings were inconsistent with the principles herein announced.

As neither the Circuit Court nor the Circuit Court of Appeals proceeded in accordance with the principles herein announced, the judgment of each court is

Reversed, and the cause is remanded for further proceedings consistent with this opinion.